

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

1341

GENERAL JURISDICTION DIVISION

MARIE J. FONTANA,

Plaintiff,

vs.

PHILIP MORRIS INCORPORATED,
("PHILIP MORRIS U.S.A."), R.J.
REYNOLDS TOBACCO COMPANY,
LORILLARD TOBACCO CO., and BROWN
& WILLIAMSON TOBACCO CORP.,
Individually and as Successor to the
AMERICAN TOBACCO COMPANY,

Defendants.

CASE NO. 00-01731 CA01

TRIAL

Volume 12

TRANSCRIPT OF PROCEEDINGS

in the above-styled cause before the Honorable Thomas S. Wilson, Jr., Circuit Judge, at the Dade County Courthouse, 73 W. Flagler Street, Miami, Florida, on Monday, March 26, 2001, at 1:30 p.m.

Miami, Florida

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12
13
14 I N D E X

15 MARIE J. FONTANA

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1 THE COURT: How are we doing this
2 afternoon?

3 Have a seat. Relax.

4 What do we have?

5 MR. WEINSTEIN: Judge, before we proceed,
6 I'd like to call this Court's attention to what
7 has transpired here this morning. I know at
8 least it appeared that Your Honor takes copious
9 notes, and I'm sure Your Honor is aware of
10 most, if not everything, that I'm going to say
11 to Your Honor. But it seems that our opponents
12 just continue to bait us and continue to
13 disregard the Court's ruling.

14 And they do it in a very sophisticated
15 way, in which we already called to the
16 attention of the Court, as Mr. Hunter nudged to
17 me. I tried to get up and call it to the
18 Court's attention, and he said, "What's the
19 use? You can't stop them in doing the things
20 that the Court has admonished them."

21 Your Honor knows where I'm going, I
22 believe.

23 THE COURT: Choice and Fabre.

24 MR. WEINSTEIN: Exactly, Judge. You may
25 remember, Judge, the first thing happened,

1 Mr. Engram violated your rule. You said,
2 "Mr. Engram, you're going to have to deal with
3 me if you talk about choice again."

4 The next thing was Mr. Reilly got up here
5 and he told the jury that 30 -- well, I even
6 wrote it down exactly. "In addition," he said:
7 "30 percent of TWA's flight attendants didn't
8 come back. They said they wanted to do
9 something else. Not all flight attendants went
10 back to work." I'm quoting.

11 And then he said, "I even think she got a
12 real estate license," I think. So I called
13 that to Your Honor's attention. And, of
14 course, Your Honor made rulings and said, of
15 course, that you would grant a new trial if
16 we --

17 THE COURT: I said I might.

18 MR. WEINSTEIN: That's true. You used
19 some tentative words, depending upon their
20 conduct and depending upon the overall picture
21 here, Judge. I appreciate that.

22 But, you see, then you may remember,
23 Mr. Upshaw, the third time, you had to even
24 interrupt his questioning when he asked a
25 witness about: Well, in seniority, she didn't

1 have to go back there, or whatever it was, but
2 Your Honor may recall Your Honor interrupted
3 and cautioned this jury: Ladies and gentlemen
4 of the jury, the only issue -- the conduct of
5 the plaintiff, the conduct of the airlines is
6 not an issue.

7 Your Honor had to do it. And we're being
8 baited. We don't want to keep on getting up.

9 Now, Judge, I want to address a matter
10 that really is very upsetting, because it
11 involves their young lawyer over there,
12 Mr. Geraghty. That's the fourth time.

13 What did Mr. Geraghty do this morning?
14 What Mr. Geraghty said was, to the pilot -- his
15 name was Pakulsky. Do you remember this,
16 Judge? "You didn't turn on those two air
17 conditioners. You only had two air
18 conditioners. You didn't have three air
19 conditioners working."

20 THE COURT: I remember the testimony.

21 MR. WEINSTEIN: And he said, "That's
22 because the airline wanted to save fuel,
23 right?" Objection, sustained.

24 Well, the jury has that information now.
25 You would not tolerate that kind of

1 information. You would not tolerate that type
2 of evidence, so he just threw it out there.

3 Your Honor knows Ridarsick versus
4 Amirkanian, Third District case 1962. The law
5 has been pretty clear and basically stands for
6 the proposition that a question asked during
7 the trial may convey prejudicial information
8 warranting a new trial even though the
9 reference is excluded.

10 Can anyone possibly believe that
11 Mr. Geraghty and the defendants are going to
12 put in information that the airlines wanted to
13 save money because it would cost more for the
14 fuel when they have the three air conditioners
15 on or circulating?

16 They throw it out there because they know
17 from their mock trials that notwithstanding
18 anything that a jury is told, they know they
19 consider that.

20 It's very, very frustrating. We don't
21 know where to go, how we can prevent it.

22 THE COURT: Well, you've made your record
23 for it and there's no question in my mind
24 you're about 100 percent correct, maybe
25 99 percent correct, but not much worse than

1 that.
 2 MR. WEINSTEIN: I just don't know what to
 3 do.
 4 THE COURT: What do you want me to do?
 5 MR. WEINSTEIN: You're asking me the same
 6 question you asked me before.
 7 THE COURT: Right.
 8 MR. WEINSTEIN: I don't know what to do.
 9 Judge, they keep on disregarding. It seems
 10 that Mr. Chumbley is the only one who hasn't
 11 said anything along those lines yet.
 12 THE COURT: He hasn't had an opportunity.
 13 MR. CHUMBLEY: Wait a second, Your Honor.
 14 That's not true. I haven't said much of
 15 anything.
 16 THE COURT: You have had an opportunity;
 17 you passed it by?
 18 MR. CHUMBLEY: I'm not going to respond to
 19 that one, Your Honor.
 20 THE COURT: I won't ask you to, believe
 21 me.
 22 MR. WEINSTEIN: In any event, Judge, they
 23 just think, it seems to me, and I've been
 24 around here for 40 years, it seems to me they
 25 think they can get away with it,

1 notwithstanding anything you say or we say.
 2 It's the most frustrating situation to sit
 3 here and you say --
 4 THE COURT: Mr. Weinstein, let me just
 5 tell you one thing. It's been my experience in
 6 far less than 40 years around these courts that
 7 the world does turn. Sometimes you just have
 8 to be patient.
 9 MR. WEINSTEIN: That's what Mr. Hunter
 10 keeps on telling me.
 11 THE COURT: Well, for once, I agree with
 12 Mr. Hunter.
 13 MR. WEINSTEIN: But, Judge --
 14 THE COURT: The record is clear and I want
 15 to get this trial started. So I'm going to cut
 16 you off. With all due respect, I'm going to
 17 cut you off right now.
 18 MR. REILLY: Your Honor, may we respond?
 19 THE COURT: Certainly.
 20 MR. REILLY: Your Honor, as you may
 21 recall, at the outset of this case there was
 22 the discussion of the multiple purposes to
 23 which evidence could be presented. One of the
 24 purposes was to address exposure levels.
 25 THE COURT: We've gone over that. I

1 understand that.
 2 MR. REILLY: Correct. And I would
 3 remind Your Honor that no sooner did
 4 Mr. Weinstein get up and complain at
 5 had said in my opening statement, they
 6 their witness Alani Blissard on the stand
 7 on direct examination one of the first
 8 statements she made was the flight attendants
 9 select which position they're going to have
 10 airplanes through the seniority process.
 11 THE COURT: But you've got to be, frankly -- I understand there's seniority
 12 understand you pick where you're going.
 13 But, for example, when you are the purser
 14 whatever the purser is called at TWA, it
 15 appears that the purser has to go through
 16 section.
 17 So for you all to be saying to me or to the
 18 jury that this is somehow or another the
 19 less exposure, really, frankly, I don't think
 20 it's a question of even a question of less
 21 exposure, because sooner or later, even
 22 quantities that one particle in an Orange
 23 it does apparently cause some problems.
 24 MR. REILLY: Your Honor, you've over-

1 half the case.
 2 THE COURT: Well --
 3 MR. REILLY: Not even half the case.
 4 THE COURT: I understand that, but I
 5 haven't been living in a vacuum for the
 6 50-plus years either.
 7 MR. REILLY: I'm not saying you've lived
 8 in a vacuum. I'm saying there's an issue
 9 the case.
 10 THE COURT: I understand where you're
 11 coming from.
 12 MR. REILLY: Mr. Geraghty's reference
 13 these air packs, in fact that was brought up
 14 direct examination, the reference to how
 15 packs are used and when they're used and
 16 they're decided on and why they're decided
 17 is the direct product of what the plaintiff
 18 brought up on direct examination.
 19 THE COURT: That's fine. I sustained the
 20 objection and that's all I did.
 21 MR. REILLY: I understand. So I'm not
 22 suggesting that you did anything improper.
 23 It's just that when we are constantly being
 24 attacked as having done something improper,
 25 fact of the matter is that we haven't -- we

1 have not violated your rule. You may find
2 things to be irrelevant, or you may find things
3 to be --

4 THE COURT: Let's put it this way. There
5 is at least an argument that could be made and
6 has been made that you have, in fact, violated
7 the rule. But I'd like to get on with the
8 trial. If I have to deal with that, I'll deal
9 with it at the appropriate time. Then we'll
10 have something to argue about if we have
11 anything to argue about. But right now we
12 don't have anything to argue about.

13 MR. ENGRAM: Your Honor, one other thing
14 before we get started.

15 We had filed a notice of intent to request
16 judicial notice with respect to three things
17 we'd like the Court to take judicial notice of:
18 The fact that in May 1973 the Civil Aeronautics
19 Board enacted a regulation published in the
20 Federal Register requiring air carriers to
21 provide designated smoking sections on
22 commercial aircraft.

23 We'd like the Court to also take judicial
24 notice that in April of 1988 smoking was banned
25 on domestic flights of two hours or less. And

1 that in February of 1990 smoking was banned on
2 domestic flights of six hours or less duration.

3 And we'd like the Court to state that to
4 the jury prior to the testimony of Ms. Fontana.

5 MR. HUNTER: Well, I object to that. This
6 is my case. I don't have any objection to the
7 Court taking judicial notice of those various
8 things, but I don't think we need to publish it
9 during my case.

10 THE COURT: I don't think -- it's out of
11 turn. It's his case and you can publish it
12 when it becomes your case.

13 MR. ENGRAM: Thank you, Your Honor, but
14 will you at this point take judicial notice of
15 those three things?

16 THE COURT: I don't think I have any
17 choice. Yes, absolutely. I'll take judicial
18 notice. I'm assuming that the representations
19 you made were correct. I don't know what the
20 CAB did in May -- I assume it's true. I
21 haven't heard anybody say the opposite.

22 MR. ENGRAM: We attached documentation in
23 support of those statements.

24 THE COURT: That's what I assumed. I
25 assume I had nothing but that.

1 MR. ENGRAM: Thank you, Your Honor.

2 THE COURT: Todd, bring the panel in.
3 (The jurors entered the courtroom.)

4 THE COURT: Good afternoon, ladies and
5 gentlemen. Hope everybody had a good lunch.
6 Let the record reflect all our jurors are
7 present and accounted for and we're ready to
8 proceed.

9 Mr. Hunter, who is your next witness?

10 MR. HUNTER: We call Marie Fontana.

11 Ms. Fontana, would you walk on up there?
12 Take a seat.

13 Don't trip on anything here.

14 THE WITNESS: No.

15 THE COURT: Ma'am, raise your right hand.
16 Thereupon:

17 MARIE J. FONTANA

18 been called as a witness, was duly sworn, examined,
19 and testified as follows:

20 THE COURT: Please state your full name,
21 spell your last name for our court reporter,
22 and give us your full address.

23 THE WITNESS: Marie J. Fontana,

24 F-O-N-T-A-N-A, [DELETED]
25

1 THE COURT: Thank you, ma'am.

2 Your witness, Mr. Hunter.

3 DIRECT EXAMINATION

4 BY MR. HUNTER:

5 Q. Good afternoon.

6 A. Afternoon.

7 Q. Are you okay?

8 A. Yes. It takes me a little while to --
9 because of walking. I'm okay.

10 Q. Marie, tell us how it was that you decided
11 to become a flight attendant?

12 A. First of all, I had a very good friend of
13 mine who flew for PanAm, and she said I would be a
14 good flight attendant. And she told me what all the
15 benefits and everything was.

16 And I applied. And I was working for a
17 French company at the time in New York. And I loved
18 to travel and all this, so I applied with three
19 airlines: TWA, Eastern and PanAm.

20 And TWA gave me my first interview and I
21 was hired. And it was really funny, too, because
22 I --

23 THE COURT: Go ahead.

24 A. I almost missed that interview, because
25 walking through Manhattan I broke the heel of my

1 shoe. So I walked into the interview holding the
2 shoe, I said, "I'm here," which shows determination.
3 So we had an interview and I was hired.

4 And after that I called PanAm and Eastern
5 and told them I was hired by TWA.

6 Q. Was TWA a good company to work for? Was
7 it better or worse, or you tell me, than Eastern?

8 A. TWA was the airline to work for then. We
9 were the elite of the sky. It was the best company
10 to work for as far as everything. We were the first
11 airline to have transAtlantic. We flew all over the
12 world; more international flights than PanAm. We
13 were really -- we were known all over. Yes, it was
14 a great, great airline.

15 Q. How old were you when you first took your
16 job?

17 A. I don't remember. Early 30s. I don't
18 remember.

19 Q. How many languages do you speak?

20 A. Fluently I speak five languages.

21 Q. How did you learn to speak so many
22 different languages?

23 A. I grew up with French and Spanish at home.
24 And I learned Portuguese; my family background. And
25 I learned Italian, some German. I'm very easy

1 with -- to learn languages. They come easy.

2 Q. When you were growing up, where did you
3 get your education? Where were you schooled?

4 A. In the early years it was home. And then
5 after that in New York, and I attended some
6 university courses in France.

7 Q. And we've heard from your daughter this
8 morning. Where did she go to school?

9 A. She went to school in Haiti.

10 Q. Why did you have her educated in Haiti?

11 A. At the time it was customary anyway for
12 Haitian families to send the children back home to
13 go to school. Our school system is a French system,
14 which is a pretty good and very strong discipline
15 system, a good education.

16 Q. Does she speak French and English and
17 Spanish?

18 A. Yes, she does. Some French, but, she
19 does.

20 Q. How many years did you work for TWA?

21 A. From 1972 until 1996 when I retired, plus
22 we had two years of furlough. We were fired
23 basically, because of a strike situation, for two
24 years.

25 Q. And what year was the strike?

1 A. In 1986, March of '86. And in 1988, I
2 believe it was August of '88, July of '88 or August
3 I was recalled back to work.

4 Q. Now, I'm going to show you a picture here,
5 the seating arrangements on an airplane.

6 Are you all right?

7 A. Sorry.

8 Q. Now, can you identify this for us?

9 A. It's a 747.

10 Q. Okay. Did I ask you to draw this or --

11 A. I did.

12 Q. -- or get this for me?

13 A. I did.

14 Q. What have you indicated here by the
15 colored seats?

16 A. The smoking seats on board the 747.

17 Q. Okay. Now, how many different airplanes
18 did you fly on?

19 A. I flew -- from '72 I flew the 707, the
20 747, the 1011. And in the later years of my career
21 I flew some of the 767s and a few domestic, DC9s.

22 Q. All right. Was smoking permitted during
23 the entire career that you flew?

24 A. In the beginning up to the strike, when we
25 left, smoking was permitted throughout the cabin.

1 We didn't have designated smoking areas. You could
2 smoke anywhere, everywhere, yes. We didn't have
3 regulations.

4 Q. Now, these are what? This is like after
5 there was some regulation --

6 A. Yes.

7 Q. -- when smokers were separated from
8 nonsmokers?

9 A. Yes.

10 Q. How many seats were available for smoking
11 passengers?

12 A. Approximately about 226, 28. We carry
13 430, I'm not sure exactly, passengers.

14 Q. And generally where were you -- where did
15 you fly to?

16 A. Most of my career I've flown
17 international, to France, Spain, Italy, Germany. A
18 lot of London.

19 Q. Was there ever a time when you flew
20 domestic more than you did international?

21 A. Yes. Some months in 1985 -- 1995, I'm
22 sorry, because I was basically getting so sick that
23 it was difficult for me to do long-haul flights, I
24 was bleeding, I was coughing, and all sorts of
25 difficulties.

1 So I -- it was easier to just up and down,
2 land, being off the air for a little while, then go
3 back up, yes.

4 Q. Tell the jury in your words what the
5 smoking on the plane did to your body when you would
6 work.

7 A. When I would work a smoke cabin, which was
8 all over the place basically -- can I explain --
9 because of the structure of an airplane, you can't
10 get away from the smoke. Even when you were in a
11 nonsmoking zone, you still have smoke because you
12 can't open windows and let the smoke out.

13 I had chest pain, very laborious
14 breathing. Sometimes I was nauseous. And many
15 times I had to disappear in the bathrooms to catch
16 my breath.

17 And sometimes flight attendants would --
18 they don't appreciate that when you're working a
19 full load and feel like, oh, what's the matter? You
20 know, you're always leaving the cart, you're
21 always -- so that aggravated a lot of my colleagues
22 that I flew with sometimes.

23 You don't want to tell people all the
24 time, "I can't breathe. I'm in pain." And that is
25 a group of people where if you're sick, you stay

1 home. You don't come to work. Because everybody
2 has to pull their share. There's no extra bodies
3 lying around that can take your place if you're not
4 pulling your share. And most of the time we, as a
5 group of people, we weren't sick. Because of
6 disciplinary actions, come to work, you sick, you're
7 working, yes.

8 Q. All right. Now, at my request, did you go
9 back and review your records and try to -- so you
10 could give us an idea like what flights you would
11 fly, say, in 1994 and '93 and '91?

12 A. Yes.

13 Q. Let me show you what's been marked as
14 Plaintiff's 1-Y for identification.

15 Can you tell us, let's start with the year
16 1994, tell the jury what flights you flew and how
17 long the flights were.

18 A. I flew JFK to Barcelona. That's nine
19 hours and ten minutes of flying time.

20 Barcelona-JFK, that's nine hours and 20
21 minutes. And there are times it would be more,
22 because different circumstances, you come to land,
23 what we call in holding pattern, there are too many
24 airplanes on the ground, so you have to circle, you
25 have to wait. So it varied sometimes more. And

1 weather.

2 I flew JFK-San Juan. That's three hours
3 and 50 minutes. San Juan-JFK, three hours, 44
4 minutes. And, again, JFK, this is back-to-back,
5 what we call back-to-back, is two flights right
6 after another, where I took San Juan-JFK on the
7 13th, and on the 14th, JFK to Barcelona. And the
8 16th we work Barcelona back to JFK.

9 And on the 19th, I did LaGuardia-San
10 Francisco. San Francisco-LaGuardia on the 20th. On
11 the 21st, JFK-Barcelona. 23rd, Barcelona-JFK.

12 On the 28th, JFK-Barcelona. On the 30th,
13 Barcelona-JFK.

14 Q. And what month of the year was that?

15 A. That was in March '94.

16 Q. And how many hours did you fly that month?

17 A. That's 97 hours and 51 minutes.

18 Q. Okay. Go to the next year and give us a
19 representative month for you.

20 A. September of '94, I flew JFK-Frankfurt,
21 seven hours and 50 minutes. Frankfurt-JFK, eight
22 hours and 51 minutes. LaGuardia-St. Louis. The
23 next day, St. Louis-Houston, St. Louis-LaGuardia.
24 The following day, JFK-Paris, seven hours and 18
25 minutes. The following day, Harris-JFK. The

1 following day, JFK-Paris. The following day,
2 Paris-JFK.

3 So this was like back-to-back,
4 back-to-back, back-to-back.

5 Sometimes -- may I explain why sometimes
6 flights accumulated like that?

7 Q. Yes, you may.

8 A. The company has a system that is called
9 balancing. If we fly under a certain amount of
10 hours -- let's say for some reason or another you
11 minus an hour during the month, they will balance
12 you.

13 I have a lot of domestic flights that were
14 balanced or self-balance. I will balance myself to
15 keep up to the projection, projected month.

16 On the 21st, JFK-Paris. 23rd, Paris-JFK.
17 The 24th, JFK-Paris. The 26th, Paris-JFK. That's
18 91 hours and 23 minutes.

19 Q. All right. Let me -- what year were you
20 just talking about there?

21 A. 1994.

22 Q. Tell us about, say, 1991.

23 MR. ENGRAM: Your Honor, may I ask counsel
24 to provide us with a copy of the '91 records?

25 MR. HUNTER: The witness has it.

MR. ENGRAM: Let's have a sidebar. Could we approach, Your Honor?

THE COURT: Yes, sir.

(The following proceedings were had at sidebar:)

MR. ENGRAM: Your Honor, I don't know what the basis for these records are, but we had obtained from TWA records that we provided to plaintiff's counsel. And we requested plaintiff's counsel provide copies of all the flight logs. And we produced to the plaintiffs their records for 1993, '94, '95 and '96, those four years. We have never seen any flight log records for the year 1991. This is a complete surprise.

MR. GERAGHTY: And these aren't even the flight logs. These look like something that Ms. Fontana or the plaintiff's counsel created. That's not what the flight logs look like.

THE COURT: I appreciate that. It doesn't look like a flight log.

MR. UPSHAW: That's understandable. I understand they made a demonstrative exhibit, but the ambush part of this whole thing is we've never seen any records to support this

data for 1991 before this moment.

THE COURT: Mr. Hunter?

MR. HUNTER: Your Honor, I don't know exactly how she did this, but they can certainly cross-examine her on this.

MR. ENGRAM: Well --

MR. HUNTER: I mean, they took her deposition for hours and hours and hours.

THE COURT: Did they ask for data supporting what flights she had made?

MR. ENGRAM: Yes. We asked for any -- we asked for diaries, for journals, for calendars and flight logs that depicted any flying she did while at TWA.

MR. HUNTER: And we produced those.

MR. UPSHAW: The whole point is, we can't cross-examine her if there's raw data. So if they have raw data, we need to know that now.

THE COURT: Are you telling me, Mr. Hunter, you have no raw data?

MR. HUNTER: I think she has calendars, which were produced.

MR. ENGRAM: You haven't --

THE COURT: Then they have to find out.

(The sidebar conference was concluded, and

the following proceedings were held in open court:)

BY MR. HUNTER:

Q. All right. Now, I was going to ask you about '91. How is it that you're able to tell us where you flew back as far back as '91?

A. I have the flight logs at home. I have the flight attendant agenda.

MR. ENGRAM: Your Honor, we renew our objection.

THE COURT: Okay. Noted.

BY MR. WEBB:

Q. Now, go to 1991. And can you -- these things, you have possession of them; we can bring these into the courtroom?

A. Yes, I do.

Q. And give them to the defense lawyer?

A. Yes, I do.

Q. Okay. Tell us what you flew, where you flew in 1991?

A. I flew Barcelona-Madrid. I was coming back. I was already in Spain, so Barcelona, Madrid-JFK. Then I did LaGuardia-PBI, West Palm Beach-LaGuardia. That was a turn. We call that a turn-around.

The next day I did JFK-Paris, Paris-Geneva, the same day we arrived.

The next day Geneva-Zurich-Munich. The following day Munich-JFK. That flight was ten hours and 35 minutes.

The next week it's the same schedule: JFK-Paris, Paris-Geneva, Geneva-Zurich, Zurich-Munich, Munich-JFK.

The following week -- that's with 4 days off in between.

The following week: JFK-Paris, Paris-Geneva, Geneva-Zurich, Zurich-Geneva, Zurich-Munich-JFK.

Q. How many hours in that month did you fly, Marie?

A. I didn't add these up.

Q. I'm sorry?

A. I didn't total them up.

Q. Okay.

A. Sorry. It's probably an 80-hour month, 85-hour month.

Q. Now, was this typical of your career from 1972, '73, '74, '75, '76, '77?

A. No. From --

Q. Was this the kind of flight time that you

1 were. and these were the kind of places that you
2 were flying to?

3 A. Those were the kind of flights that I --
4 we flew -- I flew. Most international flight
5 attendants did.

6 From '72 to 1986 we were -- or maybe a
7 little bit before '86, I don't remember exactly, we
8 were regulated by FAA how many flight hours we can
9 have in a quarter.

10 So we were -- I remember either it was 251
11 or 241, we were regulated to only fly that per
12 quarter. After that, we had to have X amount of
13 days off to offset the flying time.

14 After 1986 everything changed. There was
15 no -- we didn't have regulations anymore. And we
16 could fly as much as 100 hours a month. 140, I
17 could never do 140 hours a month.

18 Yes, that was typical.

19 And because we had to take a 40 percent
20 pay cut, when we went back in 1988 because of a
21 contract dispute in '86, we went back in '88 with
22 40 percent pay cut. So the hours we flew before
23 were increased to a minimum amount of your bid line,
24 would be 80, 90. So we would be flying about 100
25 hours basically.

1 Q. Now, it was suggested to the jury that
2 when you went back. your flights to San Juan, Puerto
3 Rico were nonsmoking flights; is that true?

4 A. No. When we went back in 1989, San Juan
5 was considered international for the pilots and they
6 used San Juan as a domestic flight for the flight
7 attendant for pay purposes, because of contract
8 give-back.

9 So when we flew San Juan, we get less pay.
10 The pilots got international pay. Those flights
11 were smoking flights.

12 We also flew Santo Domingo, which was
13 considered a domestic flight. It was a smoking
14 flight. The pilots got international pay. We were
15 always upset with that. Because we're on the same
16 airplane, one group of people are getting
17 international, one group getting domestic pay. It
18 was just for pay purposes. Those flights were
19 international flights.

20 Q. Now, in 1996 was the year that you stopped
21 flying, correct?

22 A. Yes. December of '96 was my last flight.

23 Q. Let me show you 1-X for identification.

24 What two months of 1996 do we have here on
25 this exhibit?

1 A. I'm sorry. I don't understand.

2 Oh, November. I'm sorry. November and
3 December of '96.

4 Q. Okay. And when was your last plane trip
5 as a flight attendant?

6 A. On the 15th of December.

7 Q. Okay. Tell the jury what your month
8 was -- in November, the month before you finally
9 stopped flying, where did you go?

10 A. I went -- I had one San Juan-JFK, San
11 Juan-St. Louis, St. Louis-San-Juan-JFK.

12 Q. Smoking or nonsmoking?

13 A. That was smoking. St. Louis-San Juan, I
14 flew the same schedule the whole month. Then toward
15 the end of the month -- do you need every week?
16 Should I?

17 Q. Well, go ahead, yes.

18 A. JFK-San Juan-St. Louis, St. Louis-San
19 Juan-JFK.

20 Q. Smoking?

21 A. Yes. JFK-San Juan-St. Louis,
22 St. Louis-San Juan-JFK.

23 Q. Smoking?

24 A. Yes. JFK-San Juan-St. Louis, St.
25 Louis-San Juan-JFK.

1 Q. Smoking?

2 A. Yes.

3 JFK-St. Louis-Phoenix.

4 Q. I'm sorry, where?

5 A. JFK-St. Louis-Phoenix. St. Louis,
6 nonsmoking, JFK. JFK-San Juan-St. Louis, St.
7 Louis-San Juan-JFK, smoking. JFK-Madrid,
8 Madrid-JFK, smoking. JFK-San Juan, San Juan-JFK.

9 Q. All right. Now, how about December of
10 1996?

11 A. December I flew JFK-San Juan,
12 San Juan-St. Louis, St. Louis-San Juan.

13 Q. Smoking?

14 A. Yes. San Juan-JFK, JFK-Paris.

15 Q. All right. Now, let me stop. JFK to
16 Paris in 1996. Tell the jury what was different on
17 that flight than had ever been before?

18 A. That was the very first nonsmoking
19 international flight I was on. That was JFK-Paris.

20 Q. And what was the difference --

21 A. Oh, my God.

22 Q. In the air quality?

23 A. It felt like walking through a park. It
24 was wonderful. Wonderful. Wonderful. Yes. It was
25 just easy, comfortable, painless. Unfortunately, I

1 was sick. But it felt wonderful. Yeah.

2 Q. How many more flights did you have before
3 you went to the hospital?

4 A. One. One more. I did JFK-San Juan and
5 San Juan-JFK. That was it.

6 MR. HUNTER: Your Honor, I would offer
7 these as the next two plaintiff's exhibits.

8 THE COURT: Okay. Subject to the note on
9 sidebar.

10 MR. HUNTER: Yes.

11 THE CLERK: 1-Y would now become No. 7,
12 admitted in evidence for the plaintiff, and 1-X
13 for I.D. would now become No. 8 admitted in
14 evidence.

15 (Thereupon, the referred-to document was
16 marked by the Clerk as Plaintiff's Exhibit 7 in
17 evidence.)

18 (Thereupon, the referred-to document was
19 marked by the Clerk as Plaintiff's Exhibit 8 in
20 evidence.)

21 THE CLERK: Plaintiff.

22 MR. HUNTER: Judge, we have no further
23 direct of Ms. Fontana at this time.

24 THE COURT: Okay. Cross?

25 MR. GERSON: Your Honor, what we're doing

1 is we're breaking her testimony into segments.

2 THE COURT: Come on sidebar.

3 (The following proceedings were had at
4 sidebar:)

5 THE COURT: In other words, you want to
6 take a 15-minute break for her?

7 MR. HUNTER: Well, what we had planned to
8 do was do like liability, which is essentially
9 what I've done, and then Mr. Gerson was going
10 to do damages. And then I thought we were
11 going to save cross until the end.

12 MR. GERSON: Well, we told them that this
13 morning. We had this discussion this morning
14 exactly that we were going to do this.

15 THE COURT: Keep your voice down.

16 MR. GERSON: Then they said they wanted to
17 do their cross at the end.

18 THE COURT: Then I think it's now you're
19 up, Mr. Gerson. We'll go until she has a
20 problem; we'll take a recess until she's ready
21 to resume the stand; then we'll finish you and
22 focus on cross-examination. Then if she needs
23 a recess, we'll take a recess and come back.

24 But I'm not going to do it piecemeal.

25 (The sidebar conference was concluded, and

1 the following proceedings were held in open
2 court:)

3 MR. REILLY: Your Honor, could we have a
4 short discussion?

5 (The following proceedings were had at
6 sidebar:)

7 MR. REILLY: I think I see another unusual
8 thing about to transpire, and that is that more
9 than one plaintiff's lawyer is going to examine
10 their own client. I've never heard of such a
11 thing. A lawyer starts, a lawyer finishes.
12 You don't get two or three bites by two or
13 three different plaintiff's counsel.

14 THE COURT: They certainly aren't going
15 into anything -- it's not dealing anything more
16 with the issue of liability in any way, shape
17 or form. I've seen them divide liability and
18 damages many times.

19 MR. REILLY: I never observed that, Your
20 Honor. I've never observed more than one
21 plaintiff's lawyer get to examine their client
22 in the same examination. So we object to it.

23 THE COURT: Okay. I'm going to allow it
24 because it's certainly not going over any same
25 matter twice.

1 (The sidebar conference was concluded, and
2 the following proceedings were held in open
3 court:)

4 BY MR. GERSON:

5 Q. Marie, I'm going to cover the direct
6 examination with you now, and I'm going to change
7 the topics a little bit.

8 We've all heard about your being hooked up
9 to this oxygen. And it's obvious; we can see the
10 equipment.

11 First off, tell us how long you have been
12 oxygen-dependent in this way.

13 A. Since last year April.

14 Q. So it's just about a year --

15 A. Yes.

16 Q. -- that you've been --

17 A. Yes.

18 Q. Now, are you connected to the oxygen feed
19 on a 24-hour a day basis?

20 A. Yes, I am.

21 Q. And that's all day, every day?

22 A. Twenty-four hours a day.

23 Q. How about when you sleep, are you able to
24 disconnect it when you sleep?

25 A. No. No. I have to sleep with it. I have

1 to take a shower with it. I have a long hose like
2 this that is connected to the tanks that I have, and
3 that allows me to move around my house. I'm on it
4 24 hours a day.

5 Q. You referred to the tanks. Are there more
6 than one kind of tank that you have for this
7 equipment?

8 A. Yes. I have two tanks, and two portables.

9 Q. Let me hold this one up.

10 Do you know what this weighs?

11 A. I think it's almost 20-pounds. That's why
12 I can't carry it myself.

13 Q. And what do you call this one?

14 A. That's a portable.

15 Q. Portable. Does it have another name
16 besides that?

17 A. Liquid portable oxygen, yes.

18 Q. So there's liquid oxygen in here?

19 A. Yes.

20 Q. And that then is -- is it force-pumped
21 into --

22 A. I --

23 Q. -- your nostrils?

24 A. Yes. Yes. The hose is the oxygen to my
25 nostrils.

1 Q. So it pushes air, pure oxygen into your
2 nose without any inspirational effort by you; is
3 that how this works?

4 A. Yes.

5 Q. And with a portable container like that,
6 how long can you go, how much of a time supply is
7 there?

8 A. Because I'm on a 4-liter flow, this lasts
9 for three, three and a half hours, sometimes three
10 hours. And the reason for that is it's hard to
11 explain to someone that's breathing normally. You
12 breathe different ways at different times. If I'm
13 eating, for example, I breathe harder, because it's
14 strenuous to eat even. So I intake more oxygen, so
15 it lasts less time. And basically it's a three-hour
16 tank.

17 Q. So that's just some kind of an average
18 figure, that three hours?

19 A. On four liters, yes.

20 Q. Now, do you have something -- is that the
21 Oxylite?

22 A. No. This is just a regular portable. The
23 Oxylite I no longer have, I no longer have because
24 it was only lasting two hours and it was too heavy
25 for me to carry, even though it's a smaller tank,

1 but it was very -- and I cannot carry anything over
2 ten pounds. I start bleeding.

3 Q. Is this the helius, is that --

4 A. The helious.

5 Q. This one is called the helius?

6 A. No. I had it with me this morning when I
7 came in. That lasts two and a half hours of oxygen.
8 That's lighter. I'm able to carry that. It has
9 less oxygen in it, too, so I'm able to carry it.

10 Q. But you can carry that one yourself?

11 A. Yes. I can even carry it on my waist. It
12 feels heavy, but it's manageable.

13 Q. Now, is there another technology that
14 that they call a concentrator?

15 A. Yes.

16 Q. What is a concentrator?

17 A. Concentrator is an electric machine that
18 forces oxygen. It changes the air in your house
19 into oxygen. And I was using that until a couple of
20 months ago, a few months ago perhaps. And that does
21 not give you 100 percent oxygen; it gives you
22 80 percent. So it's really not that accurate.

23 And because of a problem with power
24 outage, I was like -- many times the machine stops
25 working, I'm panicking, and then because up where I

1 live it rains and then we lose power even for five
2 or ten minutes, I'm -- excuse the expression --
3 freaking out because I can't breathe. But then the
4 power would come back on and the machine would come
5 back on. So I explained that to my doctor. He
6 said, "Forget it. Let's switch to the tanks."

7 Like that; it's not plugged in. So they
8 came about a week ago and they removed the other
9 machine.

10 Q. If your oxygen supply is interrupted, how
11 quickly does your condition deteriorate?

12 A. Very fast. Very fast.

13 Q. How long can you go before there are
14 noticeable effects?

15 A. If I'm sitting calmly, I can do ten
16 minutes. After that it's -- I start desaturating,
17 coughing, I choke. I can't breathe.

18 Q. Is that the sensation that you feel?

19 A. I can't breathe, tightness in the chest.

20 Yes, because basically my lungs have a lot
21 of mucus and I choke on that every day. Normally
22 every morning I go through a period of one or two
23 hours of morning chokes, I call it. You feel like
24 you're drowning in your own mucus. It comes -- it's
25 just -- it just comes out.

1 And I've managed it, first of all, by
2 sleeping sitting down. Because the more -- if I lie
3 down flat, it's -- before I was put on oxygen, I was
4 even afraid to go to bed at night, because every
5 time I lay down, I bled and I choked on the blood
6 every single time.

7 And I was just like, I'm dying here. You
8 know, it's -- so with the oxygen I don't have much
9 of the bleeding going on. I bleed, but it's not
10 every day anymore.

11 Q. At home you use a different kind of tank
12 that we haven't seen here in court, correct?

13 A. Yes.

14 Q. When you were in the courtroom the other
15 day, you had a large kind of skinny, green tank?

16 A. Yes. That's a portable.

17 Q. That's the portable, but that's the heavy
18 one that you're not able to carry?

19 A. That was the first one they gave me they
20 delivered to my house. And I was like, oh, I can't
21 use that as a portable. I can't push it. So then
22 they brought me the helius -- not the helius, the
23 Oxylite.

24 Q. Now, at home there's another tank that you
25 use that has an even larger capacity; is that right?

1 A. Yes. I have two tanks and they weigh
2 about 270 pounds each and they're in my living room.

3 And that's the main source of the oxygen
4 when I'm home.

5 Q. Let me show you Plaintiffs' Exhibit 6 in
6 evidence. And we might as well just go through all
7 these photographs at once. Now --

8 So drawing your attention to the two
9 photographs in the lower left-hand corner, in the
10 lower left picture there's two tanks and then
11 there's -- in this picture there's only one?

12 A. There's two.

13 Q. Okay. They are both there.

14 Now, are these the large 270-pound tanks
15 that you were referring to?

16 A. Yes, each.

17 Q. Is that your life line, this hose coming
18 off of those --

19 A. Yes.

20 Q. -- tanks?

21 And these are what your source of oxygen
22 is for breathing every day at home?

23 A. Yes.

24 Q. And how long do these last?

25 A. Every week they come and they refill them.

1 Q. So is it done once a week?

2 A. Once a week.

3 Q. You get a week supply?

4 A. Yes.

5 Q. And how close to empty can you go before
6 it's risky not to have them filled?

7 A. I have -- when I get down to a quarter
8 tank on the second one, I have to let them know.
9 And even on the first one, because they don't want
10 to, in case there's bad weather and they can't

11 deliver, so they'd rather come. He's on a regular
12 schedule with me, before I start my second tank, a

13 he comes to refill them before I get to the quarter
14 tank. Because if there's bad weather, then they

15 can't deliver, or if it's a weekend and I have an
16 emergency, they can't come. So, you know.

17 Q. What would happen to you in a hurricane?

18 A. I have to go to a hospital.

19 Q. And actually check in --

20 A. Yes.

21 Q. Until the weather is clear?

22 A. Yes.

23 Q. Now, in this photograph here we see the

24 skinny tank with the green top. Is that the one

25 that -- or is that like the one that we had in court

1 with you the other day --

2 A. Yes.

3 Q. -- when you visited us last week?

4 A. Yes.

5 Q. And then there's some more pictures here.

6 This is your shower. What does this show in your
7 shower that may be different from everybody else's
8 shower?

9 A. That's my shower seat. I can't take a
10 shower standing up because soaping and cleaning
11 yourself requires a lot of upper-body motion, and I
12 get totally exhausted in the shower. So I have to

13 sit down to take a shower.

14 Q. Now, in the picture just above that we see
15 this device. What is that?

16 A. That's my purifier. I have to have that
17 in the room to try to control the dust situation in
18 my house, in the room. Yes.

19 Q. So is this your bedroom that we're looking
20 at?

21 A. Yes.

22 Q. And do you have to use that downstairs or
23 have another one downstairs?

24 A. No. I don't have one in the downstairs.

25 Q. Just in the bedroom?

1 A. Yes.
 2 Q. Now, up here in the picture at the top
 3 that I've just pointed to, there's another machine.
 4 Tell us what that is.
 5 A. That's the concentrator. That was the one
 6 that I was using before. That's the electric one.
 7 Q. Okay. Now, over on the right there are
 8 two pictures of a bed. Is this your bed?
 9 A. Yes.
 10 Q. That's the bed that you sleep in every
 11 night?
 12 A. Yes.
 13 Q. Is there something about that bed that's
 14 different from what everybody else's bed is probably
 15 like?
 16 A. Pillows. All the pillows that I have to
 17 use to sleep with.
 18 Q. Well, when you sleep, what position is
 19 your body in while you're sleeping?
 20 A. I'm sitting. I sit.
 21 Q. In an upright position, bent at the waist?
 22 A. Yes.
 23 Q. Is that just the way you like to sleep or
 24 are you forced to sleep that way?
 25 A. No. I'm a belly sleeper. I always was.

1 I slept on my belly. I can't lie down flat because
 2 of the mucus. And the choking. And I cannot lie on
 3 this side because the organs, the lungs, because if
 4 they're swollen, they shift. And I feel; I'm in
 5 pain here. If I lie on this side, everything shifts
 6 and I'm in pain. So the best position for me is
 7 like this on my back.
 8 Q. So you use pillows --
 9 A. Yes.
 10 Q. -- to hold yourself up?
 11 A. Yes.
 12 Q. Even using those, and you're hooked up to
 13 the -- that's called a cannula, the piece that goes
 14 into your nose?
 15 A. Yes.
 16 Q. Are you able to sleep through the night
 17 comfortably?
 18 A. No, because I'm constantly coughing even.
 19 Q. So the cough is a 24-hour a day --
 20 A. Uh-huh.
 21 Q. -- thing?
 22 A. Yes.
 23 Q. Are there ever periods of an hour or more
 24 when you don't cough?
 25 A. No. The only time is I have a cold

1 suppressant medicine the doctor gave me. It's high
 2 codeine, but under the generic Hydromet. That
 3 suppresses the cough for about an hour or so.
 4 But that also is not great because your
 5 lung wants to expel the mucus. So when I take the
 6 syrup, it prevents me from coughing in an hour, and
 7 then after that I have so much build-up I'm in a
 8 worse situation than before. And also I take it
 9 sometimes when I really can't help it anymore.
 10 Because the syrup makes me very drowsy. I'm like
 11 not functioning.
 12 Q. There's one more photo that we haven't
 13 talked about, one more piece of equipment I want to
 14 ask you about, then we can put this down. In this
 15 photo here in the right-hand corner of the page
 16 there is another machine. Do you see what I'm
 17 pointing to?
 18 A. Yes.
 19 Q. Tell everybody what that machine is
 20 called, what it's for --
 21 A. That's called --
 22 Q. -- and how you use it?
 23 A. It's called a nebulizer. I use it three
 24 times a day. And with medication in it. And it's
 25 like a treatment to help the lungs, to help me

1 breath better.
 2 Q. How is it used?
 3 A. It has a hose, a mouthpiece where I put
 4 the medication in it, and then I actually just sit
 5 there and breath, breathing in the medication with
 6 the oxygen on. I do that. Three times a day I have
 7 to do that.
 8 What it does, it loosens up the mucus some
 9 because it's -- I don't want to gross anybody out.
 10 Q. Marie, I'm just going to keep going until
 11 you give me a signal that you want a rest. But we
 12 understand that your strength is limited, and Judge
 13 Wilson has said that he would give you a rest. But
 14 you'll have to let us know when that time has come,
 15 okay?
 16 A. Okay. Okay.
 17 Q. You know, you've only been seen by the
 18 people on the jury while you're here in the
 19 courtroom. How is it that you've been getting
 20 around outside this room and getting in and out of
 21 the building?
 22 MR. GERSON: Your Honor, I'd suggest that
 23 we take a rest at this time.
 24 THE COURT: Yes. I think that would be
 25 appropriate.

1 Let's take a ten-minute recess, please.
 2 (The jurors exited the courtroom.)
 3 THE COURT: Steve, would she be more
 4 comfortable sitting where she is now?
 5 THE WITNESS: I'm fine.
 6 THE COURT: Let's take a ten-minute
 7 recess, let you relax. I'm going to give you
 8 more water here.
 9 THE WITNESS: Thank you.
 10 (A recess was taken.)
 11 THE COURT: Are we able to proceed?
 12 MR. GERSON: Yes, we can. We're not sure
 13 how far, but we can.
 14 THE COURT: Okay. We'll take it step by
 15 step.
 16 (The jurors entered the courtroom.)
 17 THE COURT: Ladies and gentlemen, have a
 18 seat. Make yourself comfortable.
 19 Mr. Gerson.
 20 MR. GERSON: Thank you, Your Honor.
 21 BY MR. GERSON:
 22 Q. Marie, when we took a recess or just at
 23 the recess I was asking how it is you have been
 24 getting around outside the courtroom.
 25 Have you been going up and down the

1 elevators on your own and walking across the street
 2 to Steve's office?
 3 A. No.
 4 Q. Tell the members of the jury how it is
 5 that you've been getting around.
 6 A. In a wheelchair.
 7 Q. And how did you get here today from your
 8 house up in Boca?
 9 A. I was picked up.
 10 Q. Mr. Hunter sent somebody to pick you up?
 11 A. Yes.
 12 Q. Did someone help carry your equipment and
 13 have a wheelchair and help you with that?
 14 A. Yes.
 15 Q. Now, just a couple more questions about
 16 these tanks. Do they leak?
 17 A. Yes, they do leak.
 18 Q. How do you know that they leak?
 19 A. Well, first of all, you can hear it. I
 20 can hear the sh, sh, sh sound in my house.
 21 Q. And there's pure oxygen in there?
 22 A. Yes.
 23 Q. And have any dangers of that been passed
 24 on to you?
 25 A. Yes.

1 Q. What is the danger of pure oxygen leaking
 2 or being exposed in the atmosphere?
 3 A. No open flames. No cigarettes. No
 4 candles.
 5 Q. What would happen to you?
 6 A. I would catch on fire and the house would
 7 explode.
 8 Q. What might happen if one of those tanks
 9 were to roll down the steps in front of the
 10 courthouse, do you know?
 11 A. They would explode.
 12 Q. Now, because you're dependent on this
 13 technology to breathe, are there certain
 14 environments that you just cannot go into at all?
 15 A. Yes. I have to be very careful going into
 16 restaurants that use candles. I cannot be around
 17 anyone that's smoking. Anything that's flammable
 18 have to stay away from. And even in the car,
 19 sometimes I worry if there is an accident, then
 20 there's a car nearby that's in flames, that puts me
 21 in danger. So I'm living dangerously.
 22 Q. What about other places where there are
 23 large crowds or densely packed groups of people, can
 24 you go in those environments?
 25 A. I basically have to avoid them because of

1 infections. I cannot catch a cold. This might
 2 cause infection and deterioration, bleeding. And
 3 basically I have to remain very healthy aside from
 4 my lungs for the transplant. So I have to avoid
 5 crowds in case people have infections or colds or
 6 whatever.
 7 Q. If you were to go to the movies and as you
 8 were walking out of the movie theater carrying your
 9 tank or having a companion carry it for you, would
 10 there be a risk to you if a person walking in front
 11 of you lit a cigarette or --
 12 A. Yes.
 13 Q. -- did anything that was a flame?
 14 A. Yes.
 15 Q. So because of that, have you eliminated
 16 all of those kinds of environments and activities
 17 from your life-style?
 18 A. Basically. Almost. Yes.
 19 Q. Now, when you can go somewhere, because
 20 the environment is controlled or safe, how is the
 21 volume capacity or the time capacity of your oxygen
 22 supply a limiting factor for you?
 23 A. Well, I have to limit to three hours
 24 basically. And if I -- someone takes a second tank
 25 for me, five hours, because I have to allow for time

1 to get back home. I never take the risk of staying
2 out longer or even closer to the time, because if I
3 run out, I'm in trouble. So I'm limited.

4 Q. So is there a risk of something unexpected
5 happening that could cause a delay every time you go
6 out?

7 A. If there is an accident on the road -- I
8 hardly get on 95 at all with anyone. Except when I
9 have to go to Jackson once a month for meetings, for
10 the transplant. So, yes, there's always a risk. If
11 there's an accident, I'm stuck. I'm stuck, yes.

12 Q. When I questioned you about these things,
13 did you use a fairytale figure to describe yourself?

14 A. I'm like Cinderella. I've got to get home
15 at a certain time, yes.

16 Q. How often do you leave your house?

17 A. Just a second.

18 Not very often. Not very often.

19 Q. Do you consider yourself home-bound?

20 A. Yes.

21 Q. When you have guests, are there any
22 special precautions that have to be taken to make
23 sure that these hoses remain unfettered and free of
24 people's feet and furniture?

25 A. They have to watch where they step,

1 because it's a very, very long hose. And if anyone
2 steps on it, it cuts off the oxygen flow. So they
3 have to be careful where they're walking. And
4 anyone that has a cold cannot -- or is living with
5 someone with a cold, doesn't come into my house. No
6 smoking, or anything like that.

7 Q. When you were getting used to it, did you
8 have some problems yourself with tripping over the
9 hose?

10 A. Oh, yes. I tripped several times.

11 Q. Now, your cough is what the doctors have
12 explained, it's called a productive cough, correct?

13 A. Yes.

14 Q. And tell us what that means.

15 A. It's very ugly. It's a lot of mucus. And
16 it has colors.

17 Q. Is there a time of day when it's worse as
18 compared to other times of day?

19 A. Yes. In the morning it's worse. The
20 coloring is more intense. Midday sometimes it
21 lightens out. And then after that it starts. And
22 there are times it's mixed with blood, so I got
23 different rainbow colors.

24 Q. Just before the recess that we took a
25 little while ago, you kind of went into a spell or a

1 spasm when you were unable to control your cough.

2 Is that something that's unusual or is that common?

3 Tell the members of the jury how often you have that
4 kind of an experience.

5 A. That happens quite often and it's
6 unexpected. It's just the lungs expulsing, trying
7 to expulse, get rid of the mucus that's building up.
8 It comes up and then it's here and it's like -- I
9 didn't always know how to control it, because I've
10 always felt all my life, whoa, when I saw people
11 doing that, I was like whoa, gross.

12 So when it started happening to me, I was
13 like: Oh, my God; I can't -- this is stuck here,
14 it's choking me here. So I've been taught how to
15 manage it, bring it up. Sometimes I just swallow it
16 back down, which is not healthy, because if I
17 swallow it back, it builds up more and causes me to
18 have an infection.

19 It happens all day, throughout the day
20 every day.

21 Q. I notice that you're sitting with a paper
22 cup, not the cup of water that's sitting up on the
23 Judge's desk, but a paper cup that you have down by
24 your side. And that's where you put your tissues
25 after the coughs.

1 A. Yes.

2 Q. Do you have to go around with a paper cup
3 all the time?

4 A. At home I have trash cans wherever I am.

5 Q. But when you're out do you always have to
6 have a paper cup within your reach?

7 A. I use a little bag, plastic bag
8 everywhere, yes.

9 Q. Now, at the recess just a few minutes ago
10 you were upset about the episode that had just
11 occurred here in court. How does it make you feel
12 when you experience that around other people?

13 A. It's kind of humiliating. It's gross and
14 it's offensive to a lot of people. Of course, it
15 just makes me feel awful.

16 Q. Did you replace your telephone at home
17 with one that has a mute button so that the people
18 you were talking to wouldn't have to listen to that?

19 A. Yes, I have two of them. My daughter
20 finally said, "Ma, we have to do something about
21 this," because people -- and every time I'm talking,
22 I have to apologize because this comes up before I
23 could even move the phone. So my daughter went and
24 bought telephones with hold buttons, so that if I
25 feel it, I put somebody on hold so that they don't

1 have to hear this anymore. And my apologizing
2 saying I'm sorry, I'm sorry. Everybody always says,
3 "It's okay; we know you're sick." But it's not
4 pleasant.

5 Q. Now, there's been talk by some of the
6 witnesses, and there are many references in the
7 medical records that the jury will be able to see at
8 the close of the evidence, to bleeding.

9 Would you explain what sort of bleeding
10 episodes or experiences you have so that we can
11 understand the context of that?

12 A. What happens is that I will -- it's a
13 sudden occurrence. I don't know when it's coming; I
14 can't control it. I start coughing, and then all of
15 a sudden I could actually feel the blood coming out
16 of the lung. It's like a gurgling sound, and it
17 comes up and it comes out of my nose and out of my
18 mouth. And it's a lot of blood. It's pretty
19 frightening.

20 Basically, it has happened when I was
21 outside in a store and several times in stores.
22 People just run away. They don't understand.
23 They're afraid of blood, and with good reasons.

24 Q. Now, Marie, are you talking about there
25 being a bloody discharge in the sputum, or are you

1 let it happen in public.

2 Q. And it is something that has happened?

3 A. Oh, yes. And people went away.

4 Q. By people went away, you mean people were
5 frightened by it?

6 A. Yeah, they don't know -- the last time was
7 so bad that the paramedics came. I mean, I bled
8 over the store and I was -- the store owner was ve
9 kind. She got me towels and things she had in the
10 store, and was able to have prevented from going
11 everywhere else. And -- but everybody cleared o
12 of the store.

13 Q. Do you feel that -- not when something
14 horrible like that is going on, but just on an
15 average day when you're out and you're walking with
16 the cannula in your nose and holding your tank, do
17 people look at you differently that you can tell
18 from the way they used to relate to you?

19 A. Oh, yes. I find that people are afraid to
20 look at me a lot of times. I don't know whether --
21 because they think they're going to make me feel
22 uncomfortable, but they just don't want to look at
23 you. You know they're looking, but they're just
24 like -- yeah, they don't want to look.

25 Children are more like, "What's that,"

1 saying that there's a gushing of blood out of your
2 mouth and your nose?

3 A. Gushing of blood mixed with mucus, but
4 it's a lot of blood. And it comes out of my nose,
5 out of my mouth. It's all over the place.

6 Q. Where is the blood coming from?

7 A. In the lung. Like an artery. I used to
8 bleed from this artery, and then I could hear it
9 coming on this side when it was coming, or feel it.
10 I had a surgical procedure called a pulmonary
11 embolization were they cauterize the artery. And
12 this one doesn't bleed any more. But the blood
13 comes out of this side now.

14 Q. Which hospital were you in for that
15 procedure?

16 A. I was at North Ridge Medical for the
17 procedure.

18 Q. And that was an ongoing episode of
19 bleeding that was not controllable without the
20 surgery, right?

21 A. Right.

22 Q. Is this something that you have anxiety
23 about happening in a public place?

24 A. I worry every time I go out. As a matter
25 of fact, I pray every time I go and I ask God not to

1 coming up and -- but then the parents pull them
2 away, yes.

3 Q. Is that something you've had to learn to
4 get used to?

5 A. Yes. In the beginning I was, "I'm not
6 going out of my house," sort of isolated myself in
7 the very beginning with this. Because I was almost
8 embarrassed, ashamed or whatever. And then I got
9 used -- you know, got used to it, yes.

10 Q. I'm going to ask you a question that I
11 think has probably already been answered by your
12 nonverbal communication here in the courtroom, but
13 the court reporter only takes down the things that
14 are said, so I have to ask the redundant question of
15 are these spells or episodes that you've described
16 painful?

17 A. Yes. Very painful. I get a lot of pain
18 in the chest area. A lot of pain, tightness and
19 pain. There are times I even thought part of my
20 tissue, lung tissue, is coming out, too, because
21 there's so much stuff that I don't know what's what
22 anymore. Yes, it's very painful.

23 Q. Have you ever had any collateral or
24 related injury as a result of the pain from the
25 coughing spasms?

1 A. Yes. I've broken a rib on the left side.
 2 Q. Is this a constant pain when you're
 3 coughing?
 4 A. Yes.
 5 Q. Are you comfortable when you're not
 6 coughing?
 7 A. No.
 8 Q. Is there anything that you can do for
 9 relief from this pain?
 10 A. Take pain medicine. The doctor has -- you
 11 mean for rib?
 12 Q. Well, no, not for the rib --
 13 A. For my lungs, no.
 14 Q. But for the pain that you are experiencing
 15 routinely on a day-to-day basis?
 16 A. No, not for the pain, no. I take
 17 cortisone to prevent the inflammation of -- more
 18 inflammation of the lung. No, not for pain.
 19 Q. Now, you retired from TWA in -- at the end
 20 of 1996; is that correct?
 21 A. Yes.
 22 Q. And how old were you at the time of
 23 retirement?
 24 A. I'm 58 now.
 25 Q. You're 58 now?

1 A. Yes.
 2 Q. Your birthday was yesterday?
 3 A. Yes.
 4 Q. Happy Birthday.
 5 A. Thank you.
 6 Q. And so you're 58, and so how old were
 7 you --
 8 A. I'm 59. Whoops.
 9 Q. You're 59?
 10 A. 59, yes.
 11 Q. You were born in what year?
 12 A. 1942.
 13 Q. March 25th, 1942?
 14 A. Yes.
 15 Q. And so when you retired in December of
 16 1996, you would have been approximately 54?
 17 A. 54, yes. Yes, in December.
 18 Q. Is that the age that you wanted to retire
 19 at?
 20 A. No.
 21 Q. If you were healthy, would you still be
 22 working even today?
 23 A. I'd still be flying today, yes.
 24 Q. You flew for most of your adult life.
 25 Some of the other witnesses have said that you liked

1 your job. Is that a correct statement?
 2 A. I love my job, yes. Yes, it was hard
 3 work, but I liked it. Yes. I liked it.
 4 Q. Is there a mandatory retirement age for
 5 flight attendants at TWA?
 6 A. No. No.
 7 Q. Do you know of any flight attendants that
 8 have worked into advanced age, that is to say, even
 9 past normal retirement?
 10 A. We have 69, 70-year-old flight attendants.
 11 And they look good, too. Yeah. We fly as long as
 12 we can go.
 13 Q. If you were able, would you have continued
 14 flying at least to retirement age?
 15 A. Yes, definitely.
 16 Q. And given that you're divorced -- you're
 17 not married now?
 18 A. No.
 19 Q. Had you made any decision about whether to
 20 continue past that point?
 21 A. You mean flying --
 22 Q. Retirement age?
 23 A. Oh, yes. Yeah.
 24 Q. Had you decided to retire at a normal
 25 retirement age, or had --

1 A. No, I had not.
 2 Q. How much money were you earning as of the
 3 end of your career with TWA?
 4 A. Around 30,000.
 5 Q. 30,000 a year?
 6 A. Yeah, around that, yes.
 7 Q. And that was in 1996?
 8 A. Yes.
 9 Q. Was that a full -- as full a schedule as
 10 you could have and wanted to work, or was that a
 11 reduced schedule because of your illness?
 12 A. That was reduced schedule.
 13 Q. For how long had your schedule been
 14 reduced by the time that you did retire?
 15 A. I would say -- it's hard to say exactly,
 16 because it's month to month. And you want
 17 percentage-wise?
 18 Q. Any numerical way that you can express it,
 19 yes.
 20 A. I would say like by 1995, I sort of slowed
 21 down a lot of my flying because of my failing
 22 health.
 23 Q. Were you making more money in some of the
 24 earlier years?
 25 A. Sometimes, yes. Yes.

1 Q. If at the -- as of the time that you
2 retired at the end of 1996, if you were completely
3 healthy and able to work as full a schedule as you
4 wanted to work, do you know how much money you would
5 have been earning?

6 A. It could be anything; 40, 50.

7 Q. 40 to 50,000 dollars a year?

8 A. Yes.

9 Q. Now, in addition to -- in addition to the
10 salary, were there benefits that you considered
11 valuable that were part of your employment as a
12 flight attendant with TWA?

13 A. Yes. First, we have very good insurance
14 policy; dental, medical and dental. We had
15 travelling benefits.

16 Q. Let's get you to explain what you mean by
17 travelling benefits. Does that mean that if you're
18 a stewardess you can fly for free?

19 A. With TWA we did. After so many years, you
20 had free passes; you could go anywhere.

21 Q. Anywhere in the world?

22 A. Yes, anywhere we flew. And if we had to
23 fly on other airlines, we paid 10 percent on some
24 airlines, quarter fare or 10 percent; we paid 10
25 percent, yes.

1 A. Yes. Time off, yes.

2 Q. Now, when you retired, did you still --
3 were you still entitled to receive some pension
4 benefit?

5 A. Yes.

6 Q. Is it less than it would be if you worked
7 to formal retirement age?

8 A. Yes, it is.

9 Q. Can you give some reasonable approximation
10 of how much less it is as a result of the earlier
11 retirement?

12 MR. ENGRAM: Your Honor, objection.
13 Speculative, no foundation.

14 THE COURT: If she knows, she can answer.

15 A. I'm not sure of the exact amount, but each
16 year, since the retirement age is 65 and that's
17 regulated statewide -- I retired at 54, 55, so each
18 year you lose a certain amount of percentage of your
19 full retirement. So I retired 7 or 8 years before.

20 BY MR. GERSON:

21 Q. Maybe 10, but whatever that number is we
22 can compute. Do you know how much --

23 A. Yes.

24 Q. You do know how much. Tell us how much
25 the difference is.

1 Q. So for paying 10 percent of the ticket
2 price, you could fly on any U.S. airline or any
3 airline in the world?

4 A. Any airline that gave us 10 percent or 25
5 percent, yes, definitely.

6 Q. Were these travel benefits important to
7 you in your decision to be a flight attendant?

8 A. Oh, yes. Definitely.

9 Q. Is that something that you were counting
10 on using at the present time and in the years to
11 come?

12 A. Yes.

13 Q. Have you lost out on this because of your
14 illness?

15 A. Of course. I cannot go anywhere. Not
16 now, not since last year, since I started using
17 oxygen.

18 Q. So in addition to the travel benefits and
19 the insurance, what other benefits did you receive
20 as a flight attendant?

21 A. Discounts everywhere in hotels and car
22 rental and shops. And good pension. Pension was
23 very good.

24 Q. Did you get -- did you consider only
25 having to work 15 days a month a benefit?

1 A. In figures?

2 Q. Yes.

3 A. I'm not sure. I'd have to call employee
4 benefits. They'd have to tell me the exact figures.
5 But I know as you get older you lose more of the
6 retirement. My retirement is a lot less than. But
7 the exact amount I'm not sure.

8 Q. Do you have any way to give a reasonable
9 approximation of what that amount --

10 MR. ENGRAM: Objection, Your Honor.

11 THE COURT: Overruled.

12 MR. ENGRAM: She said she couldn't do it
13 without calling someone.

14 THE COURT: Well, overruled.

15 BY MR. GERSON:

16 Q. My question is: Do you have a way, a
17 method to make a computation that would be
18 reasonably accurate based on the information that
19 you have now?

20 A. I can call employee benefits and they will
21 tell me how many years I've lost as far as
22 percentage-wise.

23 Q. Now, we have talked some about the loss of
24 the travel benefits. I'm sorry to be kind of
25 doubling back on you, but there was a question I

1 wanted to ask that I forgot to ask you about that is
2 that if you were to have the lung transplant, would
3 you be able to use your travel benefits then?
4 A. I would be able to, but very limited.
5 Because after you have the lung transplant, it's not
6 like your life is normal. Can I explain?

7 Q. Sure.

8 A. Because the lungs are exposed organs, so
9 you -- they're open. You're breathing everything.
10 And because of the fact that I would have to take
11 antirejection drugs that practically would kill my
12 immune system; so, therefore, I will be susceptible
13 to infections everywhere.

14 So I would have to limit myself going
15 places. I have to wear a mask. And if I were to
16 travel somewhere, I would have to advise my
17 transplant center, which is Jackson medical, where
18 I'm going, and they would in turn get in touch or
19 put me in touch with the country or the city,
20 wherever I'm going, to another transplant center.
21 So that when I am at the destination, the slightest
22 body temperature, I would have to check in a
23 transplant center, because it would mean some kind
24 of rejection is going on, which you always are in
25 rejection, but you cannot catch anything.

1 Where a normal person could eat a piece of
2 bread that has a little mold on it -- most people do
3 that sometimes, cuts the end and eat the rest -- I
4 couldn't eat that. That would cause me to start
5 rejecting, cause me some sort of infection and I
6 would be rejecting.

7 So because of that I will be limited as
8 far as travelling, going out, eating in public, most
9 restaurants. I would have to eliminate those. I
10 would have to eliminate a lot of things that I enjoy
11 doing.

12 Q. You have started the transplant process,
13 have you not?

14 A. Yes. Yes.

15 Q. What parts of it have you already gone
16 through?

17 A. I've done all the pre-testing for the
18 transplant.

19 Q. Tell the members of the jury what that
20 involved.

21 A. They scan your entire body for illnesses.
22 Anything. Anything. Even your teeth, gum
23 infections, any infection. For example, if they
24 were to call me right now for a transplant and I had
25 a toothache, they would have to pass me by because

1 it wouldn't work. So they test your entire body.

2 I go to X-rays, scans, blood tests,
3 everything. And then once they get all the results,
4 then you're a candidate. If they don't see other
5 traces of other illnesses even, then they put you on
6 the waiting list. I am on the waiting list now.

7 Q. In fact, you had to be admitted to Jackson
8 Memorial Hospital and have a so-called work-up?

9 A. Yes.

10 Q. In order to be eligible for the transplant
11 list?

12 A. I did -- I'm sorry. Go ahead.

13 I did a week of testing, more than a week.
14 About eight days, nine days of testing. I was
15 admitted one night. Someone drove me every day. I
16 was there every day for the different tests.

17 Q. Who drove you --

18 A. Because I live -- I'm sorry. Because I
19 live local, I live in the Miami area, the hospital
20 would not pay for hospitalization for the testing.
21 So I have to be driven every day to be tested.
22 Except for that one night when they did a hard CAT,
23 they had started so late and I was under anesthesia,
24 so they had to keep me in the hospital.

25 Q. Who did you count on to drive you back and

1 forth from Miami to Boca?

2 A. Friends.

3 Q. Who are some of the friends who helped out
4 with that?

5 A. Marie McMillan took me. John took me.
6 John Pakulsky took me. My girlfriend's husband took
7 me. Gail took me.

8 Q. So you had to put together a committee of
9 people to do it on a day-by-day basis?

10 A. Yes, a whole team of people.

11 Q. You weren't able to make the trip
12 yourself?

13 A. Oh, no. No. No.

14 Q. So now that you've been through the
15 screening and the testing, have you been qualified
16 to have the double-lung transplant?

17 A. Yes. Yes, I do.

18 Q. Is it harder to get a double-lung
19 transplant than a single lung?

20 A. Yes, it is. It's harder to get lungs,
21 period. Because when you find a donor, which is a
22 terrible issue for us -- most people don't realize
23 that. We feel very bad that someone has to die --

24 Q. For you to have --

25 A. Life.

1 Q. A chance of prolonging your life, someone
2 else's life has to be lost?

3 A. Yes. Yes.

4 I forgot the question.

5 Q. Let me ask another one.

6 As a part of the process of the
7 transplantation process, is there an education
8 program for people like yourself who are candidates?

9 A. Yes. We have monthly support group
10 meetings and education at Jackson Memorial for
11 pre-transplant patients.

12 Q. So you're required to go through this
13 educational program?

14 A. Yes, because you cannot be transplanted
15 and not be involved in the transplant part. There's
16 so much to learn about your transplant, basically
17 about everything from the time that you're waiting,
18 the time that you're called, the surgery part. And
19 then the post care after. You have to learn how to
20 take care of yourself so you don't lose the organ.

21 So you have to get involved. Yes, it's a
22 requirement, because if you're not involved in
23 knowing exactly what's happening to your body,
24 recognizing signs of rejection, you can lose the
25 organ. So you have to stay very involved with it.

1 Q. Now, it sounds like you're fairly
2 knowledgeable about this subject. Is that a fair --

3 A. Yes.

4 Q. -- statement?

5 A. Yes.

6 Q. Have you done other investigation even
7 besides what's in the support group and the required
8 counseling program?

9 A. Yes. I read a lot of journals on
10 transplant. There are a lot of site -- there's a
11 site on the Internet, UNOS. It's organ donors.
12 They educate you on the medication, the drugs; the
13 pre and post, what to expect. And there's a pretty
14 large support group on the Internet where you can
15 write back and forth to other patients that are
16 waiting. Yes.

17 Q. Do you have the good fortune of having a
18 friend who has training in pulmonary medicine who
19 has helped you with this?

20 A. Yes. I have a close friend of mine.

21 Q. Who is your friend that you're referring
22 to?

23 A. Marie McMillan.

24 Q. Has Marie McMillan gone with you to these
25 meetings?

1 A. Yes, she is. And actually she's my -- I
2 call her my emergency link with Jackson Memorial.
3 Because once I'm called, she's going to be there
4 with me, and since she knows about medicine a lot
5 and she's a nurse and she would be able to observe
6 and access things.

7 And in order to call my family, because I
8 have to explain that I'm living with a beeper also,
9 so the call can come any time. And once I get a
10 call, I have to get to Jackson Memorial within an
11 hour from where I live. And that doesn't
12 necessarily mean I'm going to get the lungs; it
13 means within that hour I have to be there and then
14 they would prep me. It takes two hours and then you
15 wait in the operating room.

16 And on the other side they have to screen
17 the donor's lungs to find out whether they're
18 healthy, and pass a few tests as far as diseases and
19 whatever. And then once they screen that it's okay,
20 then they let the center know it's okay.

21 And then there's another test, that if the
22 lungs are damaged -- I have to say that lungs, it's
23 difficult. They get damaged in an accident, they
24 get crushed, they get damaged while they're
25 intubating a patient to save the person. If there's

1 any damage, then they can't use the lung. What they
2 do, I'm already sedated or I would be already
3 sedated. Then I have to stay there overnight and
4 then go back home.

5 Q. So there's a risk that you could have a
6 dry run --

7 A. Yes, several.

8 Q. And you may not get the lungs in the end
9 anyway?

10 A. Yes, several. Several dry runs. So I go
11 home again until --

12 Q. Now, has Marie McMillan been in with you
13 during your meetings with the lung transplant
14 physicians at the University of Miami?

15 A. Yes. She met the surgeons. She met just
16 about everybody, the coordinator, the social worker,
17 the therapist. She's met everyone, yes.

18 Q. But when you say she met them --

19 A. She's talked to them.

20 Q. You don't mean they shook hands in the
21 hallway?

22 A. No.

23 Q. You mean she participated in the process?

24 A. Yes.

25 Q. And so you have a beeper; they're going to

1 notify you with a beeper when there's a situation
 2 that might be suitable for you?
 3 A. Yes.
 4 Q. How long have you been on the list?
 5 A. Excuse me. Since last June. I was tested
 6 in May and June. June or beginning of July I was
 7 put on the list.
 8 Q. So it's nine months. Has there been a
 9 call yet?
 10 A. No. No.
 11 Q. Do you know what your priority is on the
 12 transplant list?
 13 A. I'm accruing seniority, like they say.
 14 They say sometimes two years. Sometimes less. But
 15 it doesn't really work this way. They usually go
 16 down to the person that's the sickest. Well, first
 17 of all, they just can't say, "These are your lungs."
 18 It has to be a perfect match as far as blood type,
 19 tissue type. Everything has to -- size, height,
 20 everything has to -- because lungs are different.
 21 So it has to really be able to fit me.
 22 So whoever is on the list. So if by any
 23 chance the first person waiting on the list, it's
 24 not a match, then they go down the line -- list
 25 until they can, you know.

1 Q. What assurances have you been given that
 2 donor lungs would be available to you in time?
 3 A. None.
 4 MR. ENGRAM: Objection. Hearsay.
 5 THE COURT: Overruled.
 6 BY MR. GERSON:
 7 Q. Do you know how long you can go without a
 8 transplant?
 9 A. About a year and a half. I was told that.
 10 Yes.
 11 Q. Now, once -- if you reach that point of
 12 having the transplant, have you been educated as to
 13 how you will have to conduct your life after the
 14 transplant surgery has been accomplished?
 15 A. Yes.
 16 Q. And how would that be different from the
 17 things that you do now? What would be required of
 18 you?
 19 A. Well, after the transplant, providing
 20 everything goes well, you get out of intensive care,
 21 the hospital stay, then you go home. Within that
 22 first month, every week I'd have to come down three
 23 times a week for bronchoscopy. It's a procedure
 24 where they go inside the lungs to see if they're not
 25 rejecting. So then blood work and all that. So

1 that goes on for the first three months.
 2 And after that, periodically you still
 3 have to get checked twice a month or three times a
 4 month.
 5 Q. Let me ask you this: All of us who have
 6 heard something about organ transplants have heard
 7 about this rejection problem that transplant
 8 recipients have to deal with?
 9 A. Yes.
 10 Q. What is it that you would have to do in
 11 order to try and overcome the risk of rejection?
 12 A. I have to take three or four
 13 anti-rejection drugs. And these drugs, you cannot
 14 miss one dose. Not one dose. If you do, you lose
 15 the organ.
 16 These drugs, sometimes you see "may cause,
 17 may cause," but this is not a "may cause." These
 18 drugs actually cause you to become a diabetic.
 19 Almost every transplant patient becomes a diabetic.
 20 Q. A diabetic did you say?
 21 A. Diabetic, high-blood pressure, kidney
 22 damage, liver damage, because they're very strong.
 23 But no matter how bad the side effects are, you
 24 cannot stop taking them. If you're having --
 25 because a lot of people get very sick on these

1 drugs, but you can't skip a dose. You have to take
 2 it, and then you have to advise the transplant team,
 3 "This is what's happening with my body." Then you
 4 have to go in and they test. Then they would switch
 5 one drug for another drug. But for the rest of your
 6 life, you have to take these medications.
 7 Q. Now, do these medications work by
 8 suppressing your natural immune system; is that what
 9 you've learned?
 10 A. It suppresses your immune system, which
 11 leaves you open for infections.
 12 And if you've had a liver or heart or lung
 13 transplant, everyone that had a transplant, you have
 14 to take the entire medication; you don't have a
 15 choice.
 16 Q. In addition to all the other side effects,
 17 there's a vulnerability to infection?
 18 A. Yes, definitely. And because lungs are
 19 open, exposed organ, so you're more exposed. I have
 20 to wear a mask when I go out. In the very beginning
 21 a lot. Constantly I have to wear a mask to go out
 22 of my house. You just have to live very carefully,
 23 on the lookout for germs, if you can recognize them.
 24 And you have to really learn your anatomy
 25 very well because -- and how your body feels. A

1 slight change in your body, you have to be able to
2 recognize that. You're rejecting and have to get --
3 after I'm transplanted, for the rest of my life I am
4 connected with the transplant center.

5 Q. There's no turning back?

6 A. No. No.

7 Q. Once you've done this, then you're --

8 A. Once they take the lungs out, that's it.

9 There's no -- once they start the procedure, they
10 can't put your lungs back in, no.

11 Q. Now, you have -- you've investigated the
12 cost of this procedure, have you not?

13 A. Yes.

14 Q. Do you know what it would cost?

15 MR. ENGRAM: Your Honor, objection. Lack
16 of foundation, lack of qualification. Has to
17 be medically reasonably --

18 THE COURT: Overruled.

19 A. I was told --

20 MR. ENGRAM: Hearsay, Your Honor.

21 BY MR. GERSON:

22 Q. Tell us how, you know, what investigation
23 you have done in order to ascertain the expenses
24 involved in having a transplant operation.

25 A. Well, Jackson Memorial tells us how much

1 this will cost, because they don't want somebody to
2 go into transplant and cannot afford to survive
3 after, with the cost of the medication. The
4 transplant itself is about \$300,000. And that is
5 providing everything goes well. In ICU you don't
6 have further complications. And that's providing
7 everything is okay.

8 Q. Are you telling us that before they would
9 accept you as a candidate and put you on the list,
10 that you were required to make financial
11 arrangements that were acceptable to Jackson
12 Memorial Hospital?

13 A. My insurance had to agree to pay the 80
14 percent they're going to pay. Otherwise -- and
15 Medicare doesn't pay for transplant.

16 Q. And who will have to pay the other 20
17 percent?

18 A. I would.

19 Q. Do you have the ability to do that?

20 A. No, sir.

21 MR. ENGRAM: Objection, Your Honor.

22 THE COURT: Continue. It's already
23 answered.

24 BY MR. GERSON:

25 Q. Do you have any anxiety or mental anguish

1 about the financial impact of the medical procedures
2 that you need to have in the future?

3 A. Yes. I -- when I first went through all
4 the testing, the testing alone was like 20 something
5 thousand dollars. I was already losing sleep over
6 that. And when I found out the cost of the
7 transplant and the \$30,000-a-year medication, I
8 worry a lot.

9 And it's something we talk about in the
10 meetings at Jackson with the social worker. We have
11 to find ways to get the money. They suggest we
12 could do fund-raising, family, friends. Try to see
13 how you can -- or write to certain drug companies to
14 see if they would provide some of the medication
15 free for a certain X amount of months.

16 Medicare provides 60 months of medication,
17 providing you're on Medicare. And recently I have
18 read also an article that -- I live in

[DELETED]

20 MR. ENGRAM: Objection, Your Honor.

21 BY MR. GERSON:

22 Q. Let me stop you there, Marie, and ask you,
23 are you on Medicare?

24 A. I have Medicare as a secondary because I'm
25 disabled. Secondary.

1 Q. And that's really only as of July of --

2 A. Yes.

3 Q. -- this past summer that you've --

4 A. Yes.

5 Q. -- achieved that eligibility?

6 A. Yes.

7 Q. Now, as a part of this case were you asked
8 to try and determine what your past medical expenses
9 were that were directly related to your illnesses
10 and your hospitalizations?

11 A. My percentage or the whole --

12 Q. The totals.

13 A. I think I've used up -- I could find my
14 Aetna totals.

15 Q. Let me show you what we've marked as
16 Plaintiff's Exhibit I-1 for identification, and ask
17 you if that reflects the expenses that were compiled
18 by you and members of Mr. Hunter's staff for past
19 medical treatment and procedures, including
20 hospitalizations?

21 A. Yes.

22 MR. ENGRAM: Your Honor, could we ask
23 counsel to show that to defense counsel?

24 THE COURT: Sure.

25 MR. GERSON: Sure. It's marked for

1 identification. But let me show it.
 2 BY MR. GERSON:
 3 Q. While counsel is looking at it, do you
 4 notice that there's some hospitals that are listed
 5 on that schedule?
 6 A. Yes.
 7 Q. There was Holy Cross Hospital?
 8 A. Yes.
 9 Q. What was done at Holy Cross Hospital?
 10 A. I --
 11 MR. ENGRAM: Your Honor, can we approach?
 12 THE COURT: Not right now. Let's go on.
 13 A. At Holy Cross I was hospitalized for the
 14 bleeding, for bronchoscopy, basically several
 15 bleeding episodes. Bronchial lavage where they go in
 16 and --
 17 Q. Wash out your bronchi and your lungs?
 18 A. Yes.
 19 Q. Now, I think it's North Ridge Medical
 20 Center is on there also?
 21 A. Yes.
 22 Q. Tell the members of the jury what was done
 23 at North Ridge Medical Center.
 24 A. That was for the pulmonary embolization.
 25 They have to close out the artery that was bleeding.

1 Q. That's when you had the bleeding on the
 2 right side?
 3 A. Yes.
 4 Q. In 1997?
 5 A. Yes.
 6 Q. Then there's a third large hospitalization
 7 bill there from Jackson Hospital. Is that the
 8 testing protocol that you've explained to us for the
 9 lung transplant candidacy?
 10 A. Yes.
 11 Q. Then there are some doctors. Are those
 12 the regular doctors who are treating you?
 13 A. Yes. Then recently I incurred more
 14 hospitalization cost last month.
 15 Q. Now, that's not even a complete list of
 16 all the medical expenses that you've had related to
 17 this illness, is it?
 18 A. No.
 19 Q. It's really just the best that you were
 20 able to do with Mr. Hunter's staff?
 21 A. Yes.
 22 Q. In the last couple of months?
 23 A. Uh-huh.
 24 Q. Your treatment goes all the way back to
 25 the original diagnosis in 1987 when you first

1 started having serious respiratory system problems?
 2 A. Yes.
 3 Q. There were even some doctors in New York?
 4 A. Yes.
 5 MR. GERSON: Your Honor, I'd like to offer
 6 Plaintiff's Exhibit 1-I for identification into
 7 evidence, which is a schedule of these medical
 8 expenses that the witness has just testified
 9 to. And there's a total.
 10 THE COURT: Okay. Let's take it over here
 11 at sidebar first.
 12 (The following proceedings were had at
 13 sidebar:)
 14 MR. ENGRAM: Your Honor, with respect to
 15 Plaintiff's Exhibit 1-I marked for
 16 identification, we would object. There has
 17 been no testimony that links these expenses
 18 that are summarized here with any illness that
 19 she alleges as the result of exposure to
 20 environmental tobacco smoke in this case.
 21 There's been no medical testimony from any
 22 medical provider, any treating physician in
 23 this case at this point in time to support --
 24 THE COURT: What about Edward Coopersmith,
 25 MD?

1 MR. ENGRAM: He has not testified in this
 2 case.
 3 THE COURT: We have Richards or, what's
 4 the name? Richardson? Gardiner, Gardiner.
 5 excuse me, who says in his report something to
 6 do with COPD, severe COPD. And that was
 7 requested by Coopersmith. So I'm not sure I
 8 agree with you.
 9 MR. ENGRAM: But, Your Honor, what I'm
 10 saying is there's no doctor to say that the
 11 medical treatment reflected in these bills is
 12 related to some disease alleged to be caused in
 13 this case.
 14 The plaintiffs have said on and on, time
 15 and time again that they do not contend
 16 sarcoidosis was caused by the exposure to
 17 environmental tobacco smoke.
 18 THE COURT: Talking about an aggravation
 19 of a pre-existing condition.
 20 MR. ENGRAM: They still have to have the
 21 medical testimony to make the link.
 22 THE COURT: What do you have to say?
 23 MR. GERSON: Plaintiff can testify to her
 24 own medical bills. And he's got an argument
 25 that it's not connected and we have an argument

1 that it is connected, and that's the decision
2 that the jury has to make in this trial. But
3 that doesn't mean that they don't get to see
4 what the damages are and make that decision.

5 THE COURT: I tend to agree with you. If
6 they come to that position, you're going to --
7 they might agree with you on 90 percent of
8 those bills not being related, but I think we
9 have to have the evidence for them to make an
10 intelligent decision.

11 MR. UPSHAW: Your Honor, it's my
12 understanding, maybe I'm wrong, but the case
13 law requires that these bills are reasonable
14 and customary. There must be medical providers
15 that state the bills that are presented are
16 reasonable, customary; whether they be an
17 expert, medical provider, somebody from the
18 hospital. Those bills could say 4 billion
19 dollars if that's what she thinks they are.
20 That's why the plaintiff can't just say: I
21 think the medical records, my past medical
22 expenses are X, Y and Z.

23 If she had a cold in there that had
24 nothing to do with this, if she saw
25 Dr. Coopersmith for a female problem that's

1 time?

2 A. 71,550.57.

3 THE COURT: That's the next exhibit in
4 evidence, over objection.

5 (Thereupon, the referred-to document was
6 marked by the Clerk as Plaintiff's Exhibit 9 in
7 evidence.)

8 BY MR. GERSON:

9 Q. Now, Marie, while you were out of the
10 courtroom, we have heard from various witnesses who
11 have testified about help and services that they've
12 given you.

13 Do you depend on your neighbor, Betty
14 Leitch, for example?

15 A. Yes, I do.

16 Q. And do you have an aunt? You have to
17 answer out loud.

18 A. Yes, I do.

19 Q. How old is your aunt?

20 A. She's 84 years old.

21 Q. What is her name?

22 A. Luce Qualo. Yes.

23 Q. Has your Aunt Lucy helped you in the past
24 six months?

25 A. Yes. She has been down here for a month

1 included in those records, that's why you have
2 to have some physician come in and say: "Yeah,
3 I didn't include her colds. I didn't include
4 when she came in coughing directly related to
5 sarcoidosis. These bills are for the COPD
6 which I think are important."

7 That's why you can't have the plaintiff
8 come in and say it's 8 million dollars in past
9 medical bills.

10 THE COURT: I note your objection. I will
11 allow it.

12 MR. ENGRAM: Your Honor, with respect --
13 there's a different objection --

14 MR. GERSON: I'm not offering that. Just
15 this one.

16 (The sidebar conference was concluded, and
17 the following proceedings were held in open
18 court:)

19 MR. GERSON: I know it's taking a long
20 time. Are you holding up all right?

21 THE WITNESS: Yes, it's okay.

22 BY MR. GERSON:

23 Q. Let me again show you Plaintiffs' Exhibit
24 1-I for identification, and ask you what is the
25 total of the known medical bills to the present

1 to take care of me when I came out of the hospital
2 with the collapsed lung.

3 Q. How would you get along if you didn't have
4 friends and relatives to help you out?

5 A. I don't know what I would do.

6 Q. Do you feel that you are imposing on their
7 generosity and kindness?

8 A. Yes, I do, because I take a lot of their
9 time. For example, Betty does everything for me
10 from banking to take care of my dogs, grocery and my
11 garden. Just about everything. The other people,
12 they take time off from work to drive me to Jackson
13 Memorial when Betty is not -- Betty cannot drive
14 this far by herself. Taken me to the doctor. Just
15 about everything. Groceries, food.

16 I have what I call now Meals on Wheels,
17 because my friends where I live, they all cook and
18 they bring the food and we freeze it. And I have --
19 because I cannot stand in front of the stove, too,
20 for a period of time to cook anything. The motion
21 of standing and stirring, the upper body movement
22 just exhausts me. So I have -- everyone is taking
23 care of me.

24 Q. Given the practical limitations of what
25 well-meaning people are able to do to help you, are

1 you forced to live much of your life in isolation
2 because without them you're stuck where you are?
3 A. Basically, yes. Yes.
4 Q. Have you done any investigation to
5 determine what the cost would be of having attendant
6 care?

7 A. Yes. When I came out of the hospital last
8 month in February, I was told \$10 an hour. I tried
9 through my insurance to see if I would have someone,
10 and no, a home attendant here is just a nurse that
11 comes in, which I had in the beginning, just check
12 me for the wounds, the sites where they put --
13 excuse me -- the tubes, if I was healing right.

14 And that was it. That's a home attendant.
15 Where other states the insurance -- if I was in New
16 York right now, Medicare and Aetna would pay for
17 someone to be at my house daily to take care of me
18 to help. But in Florida, no.

19 Q. You're not eligible to receive those
20 benefits?

21 A. No.

22 Q. Now, for someone who is unskilled, who's
23 just -- holds no medical license or training, just
24 someone to help you to go to the garden, to walk the
25 dog, make the bed, bring in the newspaper, escort

1 you to whatever places you are able to go, do you
2 know what something like that might cost?

3 A. I called. It's \$10 an hour.

4 Q. Would that include transportation, too?

5 A. No. I don't know. I didn't ask. I don't
6 think so, no.

7 Q. If you were able, would you have two
8 eight-hour shifts a day of someone to help just to
9 deal with the activities of daily living?

10 A. Yes. Yes.

11 May I say something?

12 THE COURT: No, there's got to be a
13 question.

14 BY MR. GERSON:

15 Q. Now, we've had a number of witnesses talk
16 about your activity level before you became ill with
17 these diseases. And so I don't want to dwell on
18 this or go into a lot of detail about it, because
19 we've already heard a lot.

20 But tell us something about some of the
21 things you liked to do, skiing, swimming, dancing,
22 cooking, just a brief description of your own self
23 as you look back on your life.

24 A. I love to dance. I love to take walks. A
25 lot of outdoor activities: swimming, walking,

1 travelling, cooking. I would cook for 250 people.
2 I catered my daughter's wedding of 250. I baked for
3 people. I'm always active. I was never a home
4 body.

5 Q. Have you had to give up all those things?

6 A. Yes.

7 Q. How has this affected your mental outlook
8 and your emotional well-being?

9 A. Sometimes I get very depressed. I cry at
10 night. And then, you know, I say, okay, okay, cheer
11 up.

12 Yeah, it's hard. It's very, very hard.

13 Living in isolation is very hard. Yes.

14 Q. Are you religious?

15 A. Yes. I have faith. I pray all the time.
16 Constantly.

17 Q. Do you take antidepressant drugs or get
18 any sort of mental health therapy or counseling to
19 help deal with this?

20 A. I do not take medication, no. I talk to
21 people. When I'm really down, I call a friend, and
22 they boost up my moral: "Soon things will end,
23 you'll get the lungs, you'll be fine." Yes.

24 Q. I guess you feel you --

25 A. I pray a lot. I ask God every day to help

1 me. And that's my strength.

2 Q. Are you just kind of doing the best you
3 can with what you've got?

4 A. Yes. Yes.

5 MR. GERSON: I have no further questions.

6 THE COURT: Mr. Engram.

7 MR. ENGRAM: Just give me a moment to help
8 set up here.

9 THE COURT: Take your time.

10 CROSS EXAMINATION

11 BY MR. ENGRAM:

12 Q. Ms. Fontana, I'm Jonathan Engram. We met
13 last fall?

14 A. Yes.

15 Q. Will you please let me know if you need to
16 take a break at any time?

17 A. Okay.

18 Q. Thank you.

19 You moved to Florida in 1987; is that
20 right?

21 A. Yes.

22 Q. And at the time you moved to Florida, the
23 TWA flight attendants were out on strike; is that
24 right?

25 A. Yes.

1 Q. And you didn't work as a flight attendant
2 for TWA from March of 1986 until August 18, 1988,
3 because the TWA flight attendants were out on
4 strike?

5 A. Yes. May I?

6 Q. So for over two years from March of 1986
7 until August of 1988, you were not on any aircraft,
8 correct?

9 A. Not as a flight attendant, no.

10 Q. And were you exposed to any environmental
11 tobacco smoke as a flight attendant on aircraft in
12 that two-and-a-half-year period of time?

13 A. Not working, no.

14 Q. Now, after you returned to work in August
15 of 1988, you became a flight service manager?

16 A. Not immediately after, no.

17 Q. But at some time after you returned --

18 A. Yes.

19 Q. -- in August of 1988, you became a flight
20 service manager?

21 A. Yes.

22 Q. And as a flight service manager you were
23 in charge of flight attendants and the overall
24 operation of the inflight services?

25 A. Yes. And I -- yes, I was trying to recall

1 the year, whether it's '89 or 1990.

2 Q. 1989 or 1990 is when you became a flight
3 service manager?

4 A. I don't quite recall the year. Either
5 1989 or 1990. I'm not sure.

6 Q. Okay. But you do remember that you were a
7 flight service manager for two or three years; isn't
8 that right?

9 A. Yes. Yes.

10 Q. Now, when you returned to work at TWA in
11 August of 1988, smoking had been banned on domestic
12 flights in the United States of two hours or less;
13 isn't that right?

14 A. I believe so.

15 Q. And shortly after you returned on February
16 the 25th, 1990, smoking was banned on domestic
17 flights of six hours or less in the United States.

18 A. I imagine so. May I explain?

19 Q. Do you --

20 A. May I?

21 Q. Yes, ma'am.

22 A. See, I wasn't really aware that much of
23 domestic flights, because I was really flying
24 international. So, you know, it's hard to explain
25 to someone, you work for one company, but you're not

1 aware of what's going on in domestic or
2 international. It was just like two different
3 companies almost.

4 Q. Now, but you did fly a mixture of
5 international and domestic flights after you came
6 back from the strike in 1988?

7 A. Yes.

8 Q. And you knew that there were these bans on
9 smoking, even if you don't know the exact date,
10 correct?

11 A. Yes.

12 Q. And the Court has taken judicial notice
13 that the six-hour ban went into effect in the United
14 States on February 25th of 1990, okay?

15 Now, you were asked some questions by
16 Mr. Hunter about flights to San Juan at that time.
17 Do you remember that?

18 A. Yes.

19 Q. Now, the flights to San Juan were included
20 in that six-hour ban, weren't they?

21 A. No, because San Juan was an international
22 flight.

23 Q. San Juan was --

24 Your Honor, may I read from the Federal
25 Register, the regulation that provides with respect

1 to the six-hour ban that it applies to Puerto Rico,
2 the United States Virgin Islands?

3 MR. GERSON: Your Honor, I'd like to make
4 an objection, and ask that we have a sidebar
5 before a document not in evidence is read.

6 THE COURT: Okay.

7 (The following proceedings were had at
8 sidebar:)

9 MR. ENGRAM: You all have gotten this
10 because it was attached to Defendants' Notice
11 of Intent to Request Judicial Notice.

12 THE COURT: Right.

13 MR. ENGRAM: With respect to Tab 9 on
14 defendant's request, we have set forth from the
15 Federal Register, dated Wednesday, March 7th,
16 1999, entitled Prohibition Against Smoking
17 14-CRF. Parts 121, 129 and 135 --

18 THE COURT: Keep your voice down a little
19 bit.

20 MR. ENGRAM: -- the entirety of the
21 regulation. Within that regulation it states
22 not only the effective date of the prohibition,
23 but it further states that Congress enacted a
24 law that required this regulation to apply to
25 any two points within Puerto Rico, the United

1 States, Virgin Islands, the District of
2 Columbia or any state of the United States,
3 other than Alaska or Hawaii, or between any
4 point in any one of the aforesaid jurisdictions
5 for --

6 THE COURT: Any two points means what?

7 MR. ENGRAM: It says between any two
8 points or between any point in any one of the
9 aforesaid jurisdictions.

10 THE COURT: Okay.

11 MR. ENGRAM: So it's clear that the
12 regulation applied to Puerto Rico.

13 MR. MCCARRON: Judge, briefly, first of
14 all, if it's a question of fact, it's not
15 something that should be taken judicial notice
16 of.

17 THE COURT: I don't have a choice in that.
18 The Federal Reg --

19 MR. MCCARRON: That's their
20 interpretation. I think you have to read the
21 whole thing in its entirety, if TWA
22 international was also being subjected to these
23 laws. I know what he reads it to be. That
24 doesn't mean that his interpretation is so.
25 Her testimony is --

1 BY MR. ENGRAM:

2 Q. Ms. Fontana, I want you to assume that the
3 Federal Register provides that flights of six hours
4 or less from the United States to Puerto Rico or the
5 United States Virgin Islands were covered by the
6 six-hour ban put into effect on February 25th, 1990.
7 Do you disagree with that?

8 A. 1990?

9 Q. Yes, ma'am.

10 A. I have to refresh my memory whether I
11 flew. On my San Juan flight, they were smoking.

12 Q. You believe after February 25, 1990, there
13 was smoking on the flights to San Juan, Puerto Rico
14 on TWA airlines?

15 A. I think so, yeah. I think so.

16 Q. Let me show you what's been identified as
17 Defendants' Exhibit A-17.

18 MR. GERSON: Counsel, can we see that
19 before you show it to the witness?

20 THE WITNESS: Excuse me. I can't read.
21 The print is too small.

22 Q. Did you bring your glasses today,
23 Ms. Fontana?

24 A. They're in my purse outside.

25 MR. ENGRAM: Could somebody get

1 THE COURT: I know her testimony.

2 MR. MCCARRON: And --

3 THE COURT: They're in conflict, yes.

4 MR. MCCARRON: But if they're asking you
5 to pick their version over her version --

6 THE COURT: The Federal Reg says what it
7 says.

8 MR. MCCARRON: Let's look at it real
9 quick.

10 THE COURT: She testified -- we have
11 conflicts in testimony all the time. The jury
12 can make -- whatever they want, to believe her,
13 or whether someone actually enforced that
14 regulation. I don't know whether it was ever
15 enforced or not. All he is saying is this is
16 the regulation; this is what it says. Now,
17 whether it was ever enforced, I don't have a
18 clue.

19 MR. GERSON: We just don't think it's
20 right to cross-examine this witness.

21 THE COURT: You may not think it's right,
22 but it's fair.

23 (The sidebar conference was concluded, and
24 the following proceedings were held in open
25 court:)

1 Ms. Fontana's glasses, please?

2 THE COURT: Meantime, why don't you go on.

3 BY MR. ENGRAM:

4 Q. Ms. Fontana, on the page that's numbered
5 1.40.6, Subparagraph H, it says that all smoking on
6 domestic flights, including extra sections and
7 flights to and from Puerto Rico and Hawaii, is
8 prohibited.

9 Now, do you recognize those pages as pages
10 from a TWA inflight services manual?

11 A. I see TWA flight service manual, yes.

12 Q. Yes, ma'am. On Page 1.40.6?

13 A. Yes. It says April 10 of '95.

14 Q. And down thereon, under Smoking, do you
15 see where it says: "All smoking on domestic
16 flights, including extra sections in flights to and
17 from Puerto Rico and Hawaii, is prohibited"?

18 A. In 1995.

19 Q. Did you have an inflight services manual
20 in February of 1990?

21 A. Probably, yes.

22 Q. Do you still have your inflight services
23 manual from February of 1990?

24 A. Probably do. If I have, yeah, probably
25 do.

1 Q. Do you know that we asked you to produce
2 any inflight services manual in this case?

3 A. No. You didn't ask me.

4 MR. ENGRAM: Mr. Hunter.

5 Your Honor, I don't know whether we need
6 to approach. But we had a request to produce
7 in this case and no such flight service manual
8 was produced by the plaintiff.

9 THE COURT: Then she apparently didn't
10 have it.

11 BY MR. ENGRAM:

12 Q. But it's your testimony, Ms. Fontana, that
13 you have at your home an inflight services manual?

14 A. I probably have parts of manuals. Because
15 we're not supposed to keep any of the TWA things. I
16 mean -- I have to say to you that a year ago I
17 cleaned out everything, threw out everything. And I
18 don't know why I would be keeping everything. The
19 only thing I really kept hold is my uniform as a
20 souvenir.

21 Q. In any event, this prohibition in this
22 edition of the TWA inflight services manual, dated
23 April from 1995, says that smoking was banned to San
24 Juan, correct?

25 A. Yes. I can see that where it says that,

1 yes.

2 Q. Didn't you tell the jury, in response to
3 Mr. Hunter's questions, that in November and
4 December of 1996 that the flights to San Juan were
5 smoking flights?

6 A. As far as I remember, they were smoking.

7 Q. So were you mistaken when you said that?

8 A. As far as I remember they were smoking,
9 sir.

10 Q. Well, then --

11 A. People were smoking.

12 Q. Then if they were smoking flights to San
13 Juan, then they would have been in violation of
14 TWA's own inflight services manual that you have in
15 front of you, correct?

16 A. Yeah. But you are quoting the San Juan
17 flight as being a domestic flight, and they have it
18 down here as domestic, right?

19 Q. It says, "All smoking on domestic flights,
20 including extra sections and flights to and from
21 Puerto Rico and Hawaii, is prohibited."

22 A. Okay. I see that.

23 Q. I'm just trying to figure out, is it your
24 testimony that smoking was not prohibited, contrary
25 to this manual?

1 A. In my mind I remember people smoking.

2 Whether I'm -- because I flew a lot of Santo Domingo
3 flights also, and that's smoking. So I --

4 Q. Santo Domingo is a foreign destination,
5 correct?

6 A. Yeah, but --

7 Q. It's not part of the United States'?

8 A. I understand what you're saying, yes. I
9 know it's not part of the United States. But San
10 Juan was also considered also an international
11 flight. And may I say something?

12 Q. Yes, ma'am.

13 A. I don't know if I'm out of order here, but
14 are you basing my illness on one year of 1995 of
15 smoking? What about the 20 something years?

16 THE COURT: Ma'am, you can't ask a
17 question.

18 THE WITNESS: I'm sorry.

19 THE COURT: No problem.

20 BY MR. ENGRAM:

21 Q. Now, Ms. Fontana, you would agree that
22 before you stopped flying for TWA in December of
23 1996, that TWA had banned smoking on select
24 international flights to London, England, Paris,
25 France and Frankfurt, Germany?

1 A. Yes.

2 Q. And, in fact, that ban on international,
3 on TWA international flights to London, Paris and
4 Frankfurt went into effect on March 2nd, 1996,
5 correct?

6 A. Yes. May I clarify that, sir?

7 Q. Yes, ma'am.

8 A. In 19 -- I'm not sure exactly, but either
9 '86, '87 or '88 we sold London, sold JFK-London
10 routes. Did not have any London flights out of JFK,
11 out of St. Louis. And we also gave up flying to
12 Frankfurt. I don't know exactly the years. Paris
13 was smoking, and the first nonsmoking Paris flight I
14 took was in 1996.

15 Q. Now, you testified earlier that you were
16 diagnosed with sarcoidosis in 1987; is that right?

17 A. Yes.

18 Q. And we talked about your attendance at
19 TWA, and for example, in 1991 weren't you commended
20 for having perfect attendance at TWA?

21 A. Yes. And that was the only year since I
22 had been flying.

23 Q. Now, during the years that you worked at
24 TWA you flew on five different types of aircraft,
25 correct?

1 A. Yes.
 2 Q. The Boeing 707?
 3 A. Yes.
 4 Q. 747?
 5 A. Yes.
 6 Q. And the 767, correct?
 7 A. **Very little of the 767, because I was at**
 8 **the end of my flying career.**
 9 Q. You flew on the Lockheed L1011?
 10 A. Yes.
 11 Q. And the Douglas DC9, correct?
 12 A. **Very little.**
 13 Q. Now, you don't know what types of
 14 ventilation systems were used on those five
 15 different types of aircraft, do you?
 16 A. **No, sir, I'm not a flight engineer.**
 17 Q. Ms. Fontana, for what years do you have
 18 flight logs at home?
 19 A. **Not from '72 on.**
 20 Q. When do they start?
 21 A. **I might have 1991. I might not have '92.**
 22 **It's not something that I kept all the year.**
 23 **They're like calendars and then they get thrown**
 24 **away. I may have a few years. I may not have**
 25 **connective years.**

1 Q. Can you tell the jury what a flight log
 2 is?
 3 A. Yes. A flight log is we write down our
 4 schedule, our days off. It's basically an agenda.
 5 It's a calendar, and you write down the days you go
 6 out on flight, where you're going. You write down
 7 everything in that agenda, your personal notes,
 8 doctors' appointment, meeting with this one,
 9 whatever. Everything is on that agenda.
 10 Q. Maybe we're talking about two different
 11 things.
 12 Did TWA provide you with a flight log that
 13 showed the actual number of hours that you flew?
 14 A. **We have what we call an FTR, monthly that**
 15 **they -- you can pick it up in the office. Sometimes**
 16 **it's put in your mailbox, sometimes not. Yes, it's**
 17 **called a flight time record.**
 18 Q. Flight time record. Okay.
 19 A. **I don't have all the months, because with**
 20 **25 years of paperwork in my house, no.**
 21 Q. Which months do you have the flight time
 22 record for?
 23 A. **Oh, God.**
 24 Q. What years do you have months of flight
 25 time records for?

1 A. I probably have '96, parts of '95. Maybe
 2 '94. They're with my taxes. I don't know if I
 3 have -- from the TWA. Some of them were missing in
 4 '96 because I was sick, and if you don't pick them
 5 up, you don't get them.
 6 Q. Okay. Let me show you what's been marked
 7 for identification as Defendants' Exhibit A-18.
 8 MR. GERSON: Counsel, could we have a
 9 look?
 10 MR. ENGRAM: Sorry.
 11 BY MR. ENGRAM:
 12 Q. Ms. Fontana?
 13 A. Yes.
 14 Q. What I've handed to you as Defendants'
 15 Exhibit A-18 marked for identification, are those
 16 the flight time records for the flights you actually
 17 flew in 1993, 1994, 1995 and 1996?
 18 A. Yes.
 19 MR. ENGRAM: Let me state for the record
 20 that we are missing a flight time record for
 21 the month of January 1994, December 1995 --
 22 excuse me, December 1994 and May of 1996.
 23 Q. Ms. Fontana, if you want to, if you want
 24 to pick any month that you have a flight time record
 25 for, I'll be glad to go over with you on this

1 calendar the flights that you took in that month.
 2 MR. GERSON: Objection. Not a question.
 3 THE COURT: Sustained.
 4 BY MR. ENGRAM:
 5 Q. Let's pick a month, Ms. Fontana. Let's
 6 pick a month, and can you go to the record for
 7 August of 1995?
 8 A. **I don't have August of '95. I have July**
 9 **of '95. September, October, June.**
 10 Q. Let me see.
 11 Ms. Fontana, is this -- can you read that
 12 copy or do we need to pull another month that's
 13 easier to read?
 14 A. **I can read some of it.**
 15 Q. Okay. In August of 1995, on August the
 16 15th, did you fly from New York to Paris, France?
 17 A. Yes. 15 -- hold on. Yes.
 18 Q. On August 17th did you fly from Paris,
 19 France to New York?
 20 A. Yes.
 21 Q. On August the 18th did you fly from New
 22 York to Rome, Italy?
 23 A. Yes.
 24 Q. On August the 20th did you fly from Rome,
 25 Italy to New York?

1 A. Yes.
 2 Q. And on August the 24th did you fly from
 3 New York to Frankfurt, Germany?
 4 A. Yes.
 5 Q. And then on August the 26th, did you fly
 6 from Frankfurt, Germany back to New York?
 7 A. Yes.
 8 Q. Now, in the month of September you had how
 9 many hours flying, September 1995?
 10 A. 82 hours and 28 minutes.
 11 Q. 82 hours and 28 minutes.
 12 Now, on my chart the month of September
 13 shows no days blocked in red for international
 14 flights. Would you look at the month of September
 15 and tell me, did you fly to any international
 16 destinations in September of 1995?
 17 A. The month of September, no. Well, I have
 18 San Juan. You know, you say it's not. Oh,
 19 September, sorry. I'm in July.
 20 No. September I haven't.
 21 Q. They were all domestic flights; is that
 22 correct?
 23 A. Yes. Can I explain something to you?
 24 Q. Yes.
 25 A. About the domestic flights?

1 Q. Yes, ma'am.
 2 A. I flew domestic during that year on
 3 certain months because of my failing health. It was
 4 easier to fly even sometimes six, seven legs a day,
 5 an hour and a half flying time, three hours flying
 6 time than long-haul flights with smoke. I was
 7 getting sick all the time and bleeding. And this
 8 was easier for me to do. And no one in their right
 9 mind would fly domestic all month and take a pay cut
 10 unless they were really forced to do it.
 11 Q. Okay. What I want to do, though, now, is
 12 go over with you your lung doctor visits during the
 13 years 1993, 1994, 1995 and 1996, and compare them to
 14 your international flight schedule. Okay.
 15 Now, you had two different lung doctors
 16 after you moved to Florida, Dr. Jonathan Greene and
 17 Dr. Edward Coopersmith, right?
 18 A. Yes.
 19 Q. Let's review your visits to Dr. Greene
 20 with the jury. You first saw Dr. Greene in May of
 21 1989; is that right?
 22 A. I believe so. I don't remember exactly.
 23 Q. Ms. Fontana, let me show you what's been
 24 admitted into evidence and identified as
 25 Defendant's -- Plaintiffs' Exhibit No. 1, and ask

1 you to turn to the --
 2 THE COURT: There's a table that you can
 3 lift up. Doesn't have it on this one? I'm
 4 sorry. My other courtroom does.
 5 THE WITNESS: Where now?
 6 BY MR. ENGRAM:
 7 Q. To Dr. Greene's records.
 8 A. All right.
 9 Q. Is the first record in Dr. Greene's
 10 document dated May 12th, 1989?
 11 A. I don't see a date on this page. Is that
 12 the first page?
 13 Q. Well, let me show you -- I guess we should
 14 identify this page then.
 15 A. You're not referring to this page, are
 16 you?
 17 Q. No, ma'am.
 18 Did you help your lawyers put together
 19 these medical records into this notebook?
 20 A. I'm looking for Dr. Greene. You asked me
 21 to look for Dr. Greene.
 22 Q. Yes, ma'am.
 23 A. This must be Dr. Greene's. I didn't build
 24 this, so.
 25 Q. Okay. We'll come back to the first visit.

1 You do see a record under the Dr. Greene
 2 tab with a date of July 13, 1989. Do you see that
 3 record, Ms. Fontana?
 4 A. Just a second, sir. I don't even know
 5 where to look for anything.
 6 THE COURT: Why don't you just take out
 7 the portions you're referring to and let her
 8 see it from your work so she doesn't have to
 9 leaf through this booklet.
 10 MR. ENGRAM: Okay.
 11 BY MR. ENGRAM:
 12 Q. Do you see a record that looks like this
 13 with a date July 13, 1989? I think you have it
 14 right there?
 15 A. Is this it?
 16 Q. Yes, ma'am.
 17 Okay. So you saw Dr. Greene on July 13,
 18 1989, correct?
 19 A. I suppose so. I don't remember dates.
 20 Yeah, I suppose so. It's here, yes.
 21 Q. Then you saw him the next time -- the
 22 third visit you had with Dr. Greene was January 29,
 23 1990, correct?
 24 A. Yeah.
 25 Q. Okay. And then you did not see Dr. Greene

1 at all for the rest of 1990. And you did not see
 2 him at all in 1991, did you?
 3 **A. Probably not. I don't know.**
 4 Q. If you turn to the next page, do you see
 5 what the date of your next visit would be?
 6 **A. I see '92.**
 7 Q. And do you see under the entry for January
 8 3, 1992, where Dr. Greene wrote: "She hasn't been
 9 here in two years"?
 10 **A. Uh-huh.**
 11 Q. Do you see that entry, ma'am?
 12 **A. Yes, I see that.**
 13 Q. Okay. And, in fact, as we mentioned a
 14 moment ago, in 1991 you had been commended by TWA
 15 for perfect attendance that year?
 16 **A. Yes.**
 17 Q. So you didn't go to your lung doctor at
 18 all in 1991, correct?
 19 **A. Possibly not. I don't know.**
 20 Q. That's what he says, "She hasn't been here
 21 in two years." And he wrote that down on January
 22 the 3rd, 1992, correct?
 23 **A. Uh-huh.**
 24 Q. You went back -- the next visit you had
 25 with Dr. Greene is August the 17th, 1993. Do you

1 see that in the medical records?
 2 **A. Just a second, sir. Okay. What year?**
 3 Q. The next page should have an office note
 4 from August 17, 1993.
 5 **A. August 17, yes.**
 6 Q. And that starts off by saying: "She
 7 hasn't been here for a year and a half"?
 8 **A. Uh-huh.**
 9 Q. Is that correct?
 10 **A. Yes.**
 11 Q. Okay. And on this calendar, on this
 12 diagram for Dr. Greene, on any date that you've seen
 13 Dr. Greene in '93, '94 or '95, I marked the calendar
 14 with a green, okay?
 15 **A. Yes.**
 16 Q. Do you see that for August of '93?
 17 **A. Yes.**
 18 Q. Dr. Greene, the day you saw him on August
 19 the 17th of 1993, he gave you a pulmonary function
 20 test, didn't he?
 21 **A. I don't know. Is it here?**
 22 Q. Do you remember, when you went to see
 23 Dr. Greene, did you ever get pulmonary function
 24 tests from him --
 25 **A. Yes, I remember that.**

1 Q. -- from time to time?
 2 **A. But I cannot remember exact dates that**
 3 **I've had pulmonary function tests.**
 4 Q. Okay.
 5 **A. No.**
 6 Q. There is a folder, so you can check if you
 7 wanted to -- you don't have to take my word for
 8 it -- but there is a tab there that says pulmonary
 9 function test. And it should list all of the
 10 pulmonary function tests -- well, for some reason
 11 it's missing.
 12 THE COURT: Mr. Engram, why don't you take
 13 that book, and when you want to refer to a
 14 date, take it out for her so she can look at
 15 it. It would be easier for her so she doesn't
 16 have to look through it.
 17 THE WITNESS: I'm on my last tank of
 18 oxygen.
 19 THE COURT: I understand. We're going to
 20 work with you. Just let us know.
 21 BY MR. ENGRAM:
 22 Q. In 1994, Ms. Fontana, you did not see
 23 Dr. Greene that entire year, did you?
 24 **A. May not; I don't know.**
 25 Q. Let me hand you this page from Plaintiffs'

1 Exhibit 1 with the office visit dated March the 6th,
 2 1995.
 3 Do you see that?
 4 **A. Yes.**
 5 Q. And do you see there in the second entry
 6 it says: "The patient has not been here since the
 7 Summer of 1993"?
 8 **A. Yes.**
 9 Q. Okay. So when you saw Dr. Greene on March
 10 the 6th, 1995, he said you hadn't been there since
 11 the Summer of 1993. And he was your lung doctor,
 12 correct?
 13 **A. Yes. And did you read what he wrote down?**
 14 Q. Yes, ma'am.
 15 And then, so that means that in all of
 16 1994, when you were flying these international
 17 flights, you did not have to go to your lung doctor
 18 for treatment, did you?
 19 **A. I was under -- I was taking my medication.**
 20 Q. You did not go see Dr. Greene at all in
 21 1994; is that true, ma'am?
 22 **A. I don't know if I did or not. He said**
 23 **that I didn't. But may I explain this? Would you**
 24 **let me explain this?**
 25 Q. Let me ask you another question,

1 Ms. Fontana.
 2 MR. HUNTER: Judge, I think she should be
 3 allowed to explain.
 4 THE COURT: I agree with you.
 5 Yes, you can explain yourself.
 6 BY MR. ENGRAM:
 7 Q. Yes, ma'am. Go ahead and explain why it
 8 is you had not been to doctor --
 9 THE COURT: Mr. Engram, I told her she
 10 could explain herself. Let her explain
 11 herself.
 12 A. Obviously you can see there's a
 13 relationship here between Dr. Greene and myself that
 14 was not very good to begin with. I was on
 15 medication, being treated for the lung problems.
 16 Yes, I did not go back to him as often as I should.
 17 And ultimately I ended up leaving this doctor
 18 because of the bad relationship we had.
 19 And with the lung problems that I had,
 20 even though it was constant, I didn't always run to
 21 the doctor. I took my medication. I took the
 22 Medrol, I took the cortisone, to help me breath
 23 better. And that's all they could do for me.
 24 Q. Was March the 6th, 1995, the last day you
 25 saw Dr. Greene?

1 A. Yes.
 2 Q. Okay. And then if you would -- I've got
 3 the tab here; I'm sorry. Let me put that piece of
 4 paper back in here so I don't mix up the plaintiff's
 5 exhibit.
 6 Then you went from Dr. Greene, you changed
 7 doctors, and started to see Dr. Edward Coopersmith;
 8 is that correct?
 9 A. Yes.
 10 Q. Under the tab that says Dr. Coopersmith, I
 11 don't see any records, so I'll have to show you
 12 mine.
 13 With respect to Dr. Coopersmith, the first
 14 time you saw Dr. Coopersmith would have been April
 15 20th, 1995; is that correct?
 16 A. Yes.
 17 Q. And Dr. Coopersmith's entries, is that a
 18 record of his hospital record from April of '95?
 19 A. That's what it says.
 20 Q. The next time you saw Dr. Coopersmith was
 21 September 11th, 1995?
 22 A. Uh-huh.
 23 Q. Okay?
 24 A. That's probably when he told me to come
 25 back, yes.

1 Q. Okay. And then the next time you saw
 2 Dr. Coopersmith was November 6th, 1995. Okay.
 3 And after you saw Dr. Coopersmith on
 4 November 6th, you had a pulmonary function test on
 5 November 22nd?
 6 A. Yes.
 7 Q. All right? November -- excuse me, that
 8 was right before the November visit.
 9 December 7th, 1995, would have been your
 10 next visit to Dr. Coopersmith, as reflected in this
 11 medical record, correct?
 12 A. Yes.
 13 Q. Okay. So in the year 1995 you saw
 14 Dr. Coopersmith in April, September, November and
 15 December, four times?
 16 A. Those were -- excuse me.
 17 Q. Okay?
 18 A. May I explain, sir?
 19 Q. Yes.
 20 A. Those were scheduled appointments by the
 21 doctor. That's when he tells me to come back so he
 22 could follow up.
 23 Q. Okay. And also in 1995 during the months
 24 of April, June, July, September and -- excuse me,
 25 and September, those four months, you had no

1 international flights where smoking was permitted,
 2 correct?
 3 A. Yes. And that's when I explained to you
 4 that I flew less international flights because of my
 5 health.
 6 Q. And there were months, in fact, when you
 7 flew once in December or twice in October and twice
 8 in May, correct?
 9 A. Yes.
 10 Q. And then in 1996, April the 12th, 1996,
 11 was the next time you saw Dr. Coopersmith, correct?
 12 A. Yes.
 13 Q. I'll show you that medical record.
 14 Let me back up a minute. Do you still
 15 have the record from December of 1995?
 16 A. Yes.
 17 Q. When you saw Dr. Coopersmith on December
 18 the 7th of 1995, you were there and you, in fact,
 19 were on medical leave because of epigastric
 20 discomfort and change in your bowel habits?
 21 A. Yes.
 22 Q. You remember when that happened?
 23 A. Yes.
 24 Q. You got some sort of stomach problem?
 25 A. Yes.

1 Q. And it affected your bowels?
 2 A. Yes.
 3 Q. So that time that you weren't flying in
 4 December of '95 was because of those problems
 5 unrelated to any lung problems, correct?
 6 A. I don't know if you would say that the
 7 whole year of 1995 I took off for that? No.
 8 Q. No. I'm saying when he makes reference on
 9 December the 7th, when he saw you on December the
 10 7th, he saw you and you were having epigastric
 11 discomfort and change in bowel habits, and it forced
 12 you to take medical leave from TWA?
 13 A. Yes.
 14 Q. Okay. When you saw Dr. Coopersmith in
 15 April of '96, you had had one flight the first week
 16 in April, you had had one flight the last week in
 17 March, no flights in February, and only two flights
 18 in January of 1996; Is that correct?
 19 A. Yes. You have to count vacation time.
 20 And if I have my flight records, I always took
 21 vacations in January, and sometimes we split our
 22 vacations, two weeks and two weeks. And there are
 23 times where I had January and February vacation
 24 back-to-back.
 25 Q. Okay. But, in any event, you were not

1 working as a flight attendant on international
 2 flights where smoking was permitted the whole month
 3 of February 1996, correct?
 4 A. No, sir. If I was on vacation, I was off.
 5 Q. And we didn't put your domestic flights on
 6 this chart either, did we? And you could check your
 7 flight time record to see whether perhaps in
 8 February of 1996 instead of flying international you
 9 flew domestic, right?
 10 A. I could check.
 11 Q. If you could do that?
 12 A. February of '96?
 13 Q. Yes, ma'am.
 14 Can I help you find it?
 15 A. I'm almost there.
 16 Q. Let me help you find it.
 17 A. Some of these are a blur. It's around
 18 there.
 19 Q. For example, on February 28th it says you
 20 flew from MCO to JFK, correct?
 21 A. Yes.
 22 Q. And MCO was that Orlando?
 23 A. Yes, that's Orlando.
 24 Q. Okay. Now, the last international flight
 25 that you flew where smoking was permitted was from

1 New York to Madrid, Spain on November 25, 1996. You
 2 may not be able to see that here, ma'am.
 3 A. Yes.
 4 Q. And you returned from Madrid to New York
 5 on November the 27th, 1996?
 6 A. Yes.
 7 Q. Okay. And then before the November flight
 8 to Madrid and back, the last international flight
 9 that you had been on where smoking was permitted was
 10 July of 1996, correct?
 11 A. Yes.
 12 Q. And it was in December of 1996, eight
 13 months after your last visit to Dr. Coopersmith,
 14 that you went to see Dr. Coopersmith. And then you
 15 had the problem that you had with bleeding, correct?
 16 A. I had been bleeding in 1995.
 17 Q. You had --
 18 A. I had, yes. Not through the artery, the
 19 sputum. I had blood. I was bleeding on flights.
 20 And I explained to you before, this is why I flew
 21 some domestic flights in 1995, because of my health.
 22 Q. Let me show you the office record from
 23 Dr. Coopersmith dated December the 20th, 1996.
 24 A. Yes.
 25 Q. It was on that visit that you saw him

1 because you had had -- he called it an emergency
 2 visit, that you had coughed up blood, correct?
 3 A. Serious bleeding, yes.
 4 Q. So you worked these months, these four
 5 months from July, August, September, October, until
 6 the end of November at TWA, didn't you?
 7 A. Yes.
 8 Q. You were just flying domestic routes where
 9 smoking was not permitted, correct?
 10 A. Yes.
 11 Q. Now, let's look back at 1995. There are
 12 365 days in 1995, and of those 365 days you were on
 13 airplanes where smoking was permitted only 36 days.
 14 We can count them. But there are 4 here, 7 here, 9
 15 there, 2 there, 6 there, 2 there, 5 there, and one
 16 in December.
 17 So those are 36 days. So 10 percent of
 18 the time, 10 percent of the days that you flew in
 19 1995, only 10 percent of those days you flew on
 20 international flights where smoking was permitted,
 21 correct?
 22 A. I suppose so.
 23 Q. And 1996 was a leap year, so there were
 24 366 days. Of those you only had exposure -- we
 25 don't have records for May; TWA doesn't have records

1 for May. But you had only 19 days that you were in
2 a plane on an international flight where smoking was
3 permitted. And that would only be 5 percent of the
4 time that you worked in 1996, correct?

5 A. Yes, 1996 I flew -- can I explain why I
6 didn't go on the international flights?

7 Q. Yes, ma'am.

8 A. In a July of 1996 flight, a TWA flight
9 engine blew up over Kennedy. And it took me a while
10 to get back on a 74 to begin with, where I lost all
11 my friends.

12 Q. Okay.

13 A. And --

14 Q. I'm sorry.

15 A. And my illness did not take place in two
16 months out of the two or three years that you have
17 in this chart. I'm sorry, Mr. Engram. I feel that
18 you are humiliating me.

19 THE COURT: Hold on one second, ma'am.

20 You just have to listen to the question. I
21 hate to do that to you, but those are the
22 rules.

23 THE WITNESS: I'm sorry. I apologize.

24 THE COURT: Nothing to apologize. It's
25 just the rules we have.

1 BY MR. ENGRAM:

2 Q. Let's talk about the international flights
3 where smoking was permitted. Smoking was not
4 permitted the first half hour after take-off, was
5 it?

6 A. Yes, that's right.

7 Q. And smoking was not permitted during the
8 last half hour before landing, was it?

9 A. That's right, when the No Smoking sign
10 would go on.

11 Q. Right. The No Smoking light would be
12 turned on during the first half hour of a flight and
13 during the last half hour of a flight before
14 landing, correct?

15 A. Yes. May I clarify that --

16 Q. Yes, ma'am.

17 A. -- a little bit?

18 That's providing we flew schedule. And
19 anyone that flies knows you really never -- if it's
20 a seven-hour flight, you may go eight hours. So we
21 really cannot base -- it's a six-hour or seven-hour,
22 yes, it was the first half hour or last half hour,
23 but you have to look at the schedule, the actual
24 flight time for that day.

25 Q. Smoking wasn't permitted when the plane

1 was at the gate on the ground at the airport, was
2 it?

3 A. No.

4 Q. And it wasn't permitted while the plane
5 had backed away from the gate and taxied to the
6 runway, was it?

7 A. No.

8 Q. Let's talk a little bit about the lung
9 transplant. You were evaluated for the lung
10 transplant in June of last year, June of 2000?

11 A. Yes.

12 Q. Now, when you have your lung transplant,
13 it's going to be performed at Jackson Memorial
14 Hospital here in Miami, isn't it?

15 A. Yes.

16 Q. After you were placed on the transplant
17 list, you began to go to pulmonary rehabilitation
18 therapy at Boca Community Hospital?

19 A. Yes.

20 Q. And did you have to fill out some forms
21 for that lung therapy program?

22 A. Yes.

23 Q. We've blown up so that both you and the
24 jury can see this form. But it's the pulmonary
25 rehab medical assessment form from her record.

1 Ms. Fontana?

2 A. Yes.

3 Q. Let me show you the first page of this
4 medical record. It's dated July the 19th, 2000.

5 A. Yes.

6 Q. And it says: "The Cardiac and Pulmonary
7 Rehabilitation Center of Boca Raton Community
8 Hospital"?

9 A. Yes.

10 Q. And this form is called Pulmonary Rehab
11 Program Medical Assessment Form, correct?

12 A. Yes.

13 Q. Your primary diagnosis in July 2000, last
14 year, was sarcoidosis, correct?

15 A. Yes.

16 Q. Was there any additional diagnosis listed
17 on this form?

18 A. The doctor did not put anything. This
19 was -- Jackson Memorial got my files from
20 Coopersmith, and from there on they directed me
21 there.

22 Q. Do you remember filling out this form with
23 someone from the Pulmonary Rehabilitation Center at
24 Boca Raton Community Hospital?

25 A. Yes. Yes.

1 Q. And they asked you about your history,
2 your health history; they asked you about your
3 symptoms, correct?
4 A. Yes.
5 Q. They asked about smoking history and
6 respiratory equipment and exercise history, correct?
7 A. Yes.
8 Q. Did they -- they even asked you, do you
9 have exercise equipment at home, and if so, what
10 kind? And you told them the clubhouse, correct?
11 A. Yes. **Can I explain?**
12 Q. Yes, ma'am.
13 A. **Because after you have the therapy, you**
14 **finish the therapy there, they want you to have a**
15 **place that you can continue exercising or sign up**
16 **for --**
17 Q. Okay. And they wanted you to do some
18 therapy, exercise, before you had the lung
19 transplant, too, right?
20 A. **They still do, yes.**
21 Q. And they asked you about your cholesterol,
22 correct?
23 A. Yes.
24 Q. They asked you about your medical history.
25 And here all it said for you to do was to please

1 check those that apply, right?
2 A. Yes.
3 Q. The first line it says emphysema.
4 Emphysema is not checked, is it, ma'am?
5 A. **I don't know that I have that, sir.**
6 Q. Chronic bronchitis. Chronic bronchitis is
7 not checked, is it, ma'am?
8 A. **I was treated for acute bronchitis.**
9 Q. Is chronic bronchitis checked,
10 Ms. Fontana?
11 A. No, sir.
12 Q. Osteoporosis, that is checked?
13 A. Yes.
14 Q. And you do have osteoporosis?
15 A. **I was told at Jackson that I had**
16 **osteoporosis, yes.**
17 Q. Pulmonary fibrosis is checked?
18 A. Yes.
19 Q. And in writing it says "plus sarcoidosis,"
20 correct?
21 A. Yes, uh-huh.
22 Q. In fact, sarcoidosis is specifically
23 listed in this column, correct?
24 A. **That's not my handwriting there, "plus**
25 **sarcoidosis".**

1 Q. This is not your handwriting?
2 A. No.
3 Q. You remembered telling somebody the
4 information recorded here, don't you?
5 A. Yes.
6 Q. Sarcoidosis is checked, isn't it?
7 A. Uh-huh.
8 Q. Sinus problems are not checked?
9 A. **At the time I didn't have it, no.**
10 Q. Kidney problems. You had kidney stones?
11 A. Yes.
12 Q. At the time you completed this you had
13 kidney stones?
14 A. **I still have kidney stones.**
15 Q. So you were told to check all that apply,
16 correct?
17 A. Uh-huh.
18 Q. You said earlier that Jackson, the doctors
19 at Jackson Memorial Hospital had tested you for
20 other illnesses, for anything else that you might
21 have, correct?
22 A. Yes.
23 Q. And the doctors at Jackson Memorial
24 Hospital didn't say that you had COPD, chronic
25 obstructive pulmonary disease, emphysema or chronic

1 bronchitis, did they?
2 A. **The doctors at Jackson Memorial did not**
3 **tell me what I had and what I didn't have.**
4 Q. Okay.
5 A. **They just told me I was accepted on the**
6 **list.**
7 Q. Ms. Fontana, you have never been diagnosed
8 with chronic obstructive pulmonary disease or COPD.
9 have you?
10 A. **Isn't that what I have? Chronic**
11 **obstructive disease, when you have -- you cannot**
12 **breath, when your lungs --**
13 Q. Ms. Fontana, do you remember when I
14 deposed you in this case?
15 A. Yes. **Yes, I understand what you're**
16 **saying, yes.**
17 Q. And do you remember when I asked you -- I
18 deposed you on February 27th, excuse me, October
19 27th of the year 2000?
20 A. Yes.
21 Q. And let me show you here -- I'll turn
22 to -- it's Page 55, Line 13. And I asked you the
23 question: "You have never been diagnosed with
24 chronic obstructive pulmonary disease or COPD?"
25 And your answer was: "No."

1 Is that correct?

2 **A. Yes, my answer was no, but --**

3 Q. Now, you were sworn before a court

4 reporter at the time you gave that testimony,

5 weren't you?

6 **A. Yes, sir.**

7 Q. Now --

8 **A. But can I explain something? I know more**

9 **now what COPD means.**

10 Q. Well, have you ever been diagnosed with

11 chronic bronchitis?

12 **A. No. Acute bronchitis.**

13 Q. Have you ever been diagnosed with

14 emphysema?

15 **A. No.**

16 Q. Now, the plaintiffs had shown you this

17 bill summary.

18 MR. ENGRAM: Do you have that, Mr. Hunter?

19 Mr. Gerson? The bill summary?

20 MR. GERSON: The one that's in evidence?

21 MR. ENGRAM: Yes.

22 MR. GERSON: Actually, they're both back

23 there on the clerk's table.

24 MR. ENGRAM: Oh, thank you, ma'am.

25 This is Exhibit 9.

1 BY MR. ENGRAM:

2 Q. Ms. Fontana, all the expenses that you've

3 listed on Exhibit 9 were expenses that were incurred

4 after you stopped flying international flights in

5 December 1996; isn't that right?

6 **A. These are.**

7 Q. Yes.

8 Now, during the time you worked as a

9 flight attendant for TWA, you never complained to

10 your supervisor about environmental tobacco smoke in

11 the aircraft, did you?

12 **A. Who would? No.**

13 Q. During the time you worked as a flight

14 attendant at TWA, you never filed a written

15 complaint with TWA about environmental tobacco smoke

16 in the aircraft cabin, did you?

17 **A. No, sir. Those were not the things that**

18 **you would write a flight report about.**

19 Q. And you don't recall ever filing a flight

20 report with TWA because a passenger had complained

21 to you about environmental tobacco smoke on a

22 flight, did you?

23 **A. Those were not the things you would write**

24 **a flight report about, no.**

25 Q. And you never told any of your doctors

1 that you felt your breathing problems in 1996 were

2 due to environmental tobacco smoke exposure on the

3 planes, did you?

4 **A. I've asked if that could be a problem to**

5 **me.**

6 Q. Let me show you your deposition, ma'am.

7 Page 53, beginning at Line 23. I asked the

8 question: "You never told any of your doctors that

9 you felt your breathing problems in 1996 were due to

10 environmental tobacco smoke exposure on the planes.

11 did you?"

12 And your answer was: "No, sir."

13 **A. 1999 it's no, sir.**

14 Q. And you never asked any doctor to restrict

15 your work to the nonsmoking sections of airplanes,

16 did you?

17 **A. No.**

18 MR. ENGRAM: Thank you, Ms. Fontana. I

19 have no further questions.

20 THE WITNESS: May I say something? May I,

21 Your Honor?

22 THE COURT: We'll let your attorney ask a

23 question first.

24 Mr. Hunter.

25

1 REDIRECT EXAMINATION

2 BY MR. HUNTER:

3 Q. Ms. Fontana, how often would the

4 passengers complain about the level of smoke; was

5 that often?

6 **A. All the time. The nonsmokers would**

7 **complain all the time.**

8 Q. You were just asked a line of questions by

9 Mr. Engram about what you did tell your doctors.

10 **A. Yes.**

11 Q. This is the first time you saw

12 Dr. Coopersmith, was five years ago?

13 **A. Yes.**

14 Q. Before any lawsuit was filed?

15 **A. Yes.**

16 Q. And you mentioned to him that you were

17 especially affected in the smoking section of the

18 plane, correct?

19 **A. Yes.**

20 Q. And is that when you would become the

21 sickest in 1995 and thereafter, when you were

22 subjected to the tobacco smoke?

23 **A. Yes.**

24 Q. Now, this chart that's been presented to

25 you, I guess it's taken from the records of TWA?

1 A. Yes.
 2 Q. And we know, because Mr. Engram indicated
 3 here, that TWA doesn't even have records for, it
 4 looks like, three months; they just lost them?
 5 A. Uh-huh.
 6 Q. So this chart is only as accurate as TWA's
 7 records, correct?
 8 A. Right.
 9 Q. Now, we did go through your calendar to
 10 see what you flew in November and December, correct?
 11 A. Yes.
 12 Q. And, in fact, I had you look at your
 13 records -- I mean, this is accurate, correct, this
 14 is what --
 15 THE COURT: What are you referring to,
 16 sir?
 17 MR. HUNTER: I'm looking at Plaintiffs'
 18 Exhibit 8.
 19 BY MR. HUNTER:
 20 Q. This is accurate about November and
 21 December, correct?
 22 A. Yes.
 23 Q. And then I also had you go back and just
 24 take years. It's a random between '93 -- as far
 25 back as '91 to give the jury a flavor for what kind

1 of flights you had?
 2 A. Yes.
 3 Q. And I'm now looking at Plaintiffs' Exhibit
 4 7. This is accurate?
 5 A. Yes.
 6 Q. But this chart that the tobacco lawyers
 7 have put together is only as accurate as whatever
 8 they were able to get from TWA?
 9 A. Yes.
 10 Q. Ms. Fontana, I had you do a lot more
 11 months than I put in evidence, didn't I?
 12 A. Yes.
 13 Q. Let me ask you if these are calendars that
 14 you put together at my request?
 15 MR. ENGRAM: Your Honor, if these are new
 16 documents, can we take a look at them?
 17 THE COURT: Certainly. Mr. Engram, why
 18 don't you take that over someplace where you
 19 can look at it?
 20 MR. ENGRAM: Okay. I've got a smaller
 21 version I can look at.
 22 Your Honor, with respect to the 1993, we
 23 don't have any problem. That reflects both
 24 domestic and international flights. The same
 25 for the other months.

1 We take issue with respect to the August
 2 and September 1991, because --
 3 THE COURT: The reason is already stated.
 4 MR. ENGRAM: Right.
 5 THE COURT: Okay.
 6 MR. HUNTER: We would offer these as the
 7 next composite exhibit.
 8 THE COURT: Yes, we'll introduce those.
 9 We'll note the objections.
 10 BY MR. HUNTER:
 11 Q. Now, you were asked a question by
 12 Mr. Engram about whether you'd ever been diagnosed
 13 with COPD.
 14 Did you know that in your medical records
 15 that your X-rays in 1996 showed severe COPD?
 16 A. No, I didn't know that.
 17 Q. You were telling him the truth to the best
 18 you understood when he asked you the question?
 19 A. Yes, definitely.
 20 Q. You were asked a question by Mr. Engram
 21 about what you knew about the ventilation system of
 22 the airplane?
 23 A. Yes.
 24 Q. I believe you said you weren't a pilot?
 25 A. Right.

1 Q. But what was the air quality like in the
 2 plane; you do know that?
 3 A. It was very bad. Sometimes if you stood
 4 in one cabin, the smoke was so dense you couldn't
 5 see through the next cabin. My suitcase, my crew
 6 kit, which is stored inside the aircraft with my
 7 clothes inside of them, would smell like nicotine.
 8 You could never get rid of that smell. Everything
 9 smelled like I was a smoker myself. People thought
 10 I actually smoked, because everything I had smelled
 11 like nicotine inside my suitcase. The smoke was
 12 everywhere, all over the cabin.
 13 Q. When you were an inflight supervisor,
 14 would that make you have more subjecting of yourself
 15 to smoke?
 16 A. A lot of times, yes, because even though I
 17 also worked as a cabin attendant, even though I was
 18 a flight service manager, I worked the carts, so I
 19 was in the smoking section and nonsmoking at the
 20 same time. And I also ended up in the rear of the
 21 aircraft where I had to inventory the duty-free
 22 items for sale for the flight attendants to take out
 23 and return.
 24 So I was there, and this is where I spent
 25 a lot of time. And this is a smoking zone because

1 it's in the back of the aircraft. That's where we
2 had the storage for the duty-free on the 747. And
3 the 67, the 1011 was in the galley downstairs, where
4 that was a flight attendant smoking area. Everybody
5 went downstairs to smoke.

6 Q. And Mr. Engram only asked you about the
7 '90s; he didn't ask you anything about the decade of
8 the '80s?

9 A. No.

10 Q. Or the decade of the '70s?

11 A. No.

12 Q. But you were there every day on the plane?

13 A. Yes, sir.

14 Q. Year after year?

15 A. Year after year.

16 Q. Decade after decade?

17 A. Yes.

18 MR. HUNTER: I have no further questions.

19 THE COURT: Thank you, ma'am.

20 Ladies and gentlemen, I think that covers
21 everything we're going to have today. And
22 thank you for your patience for staying a
23 little longer than normal.

24 Remember my instructions. 10:00, second
25 floor tomorrow. Other than that, have a very

1 good evening and we'll see you tomorrow.

2 (The jurors exited the courtroom.)

3 THE COURT: Anything else before we leave?

4 Oh, yes, we do have one other thing.

5 MR. ENGRAM: Your Honor, could we ask that
6 before we reconvene tomorrow morning that we
7 get any additional flight logs that have been
8 withheld from us?

9 THE COURT: Yes, sir. That was the one
10 more thing that I was talking about.

11 Apparently there's some -- whatever paperwork
12 that was utilized to develop those, at least
13 the '91s we need to have.

14 MR. UPSHAW: Your Honor, we move to strike
15 those exhibits.

16 THE COURT: I'll withhold any ruling on
17 that until tomorrow.

18 MR. UPSHAW: Okay.

19 THE COURT: We'll see what's what, then
20 we'll have a better chance of figuring out
21 what's appropriate to do. Then we'll be in
22 recess.

23 (Court was in recess at 5:25 p.m.)
24
25